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GROWTH OF AMERICAN THEORIES OF POPULAR GOVERNMENT

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Next to the conception of a visible church, no abstraction has had such an effect upon the minds of men as the idea of the State as an organization. The Roman Imperium has been a regnant principle in Europe for twenty centuries, against which the church in the Middle Ages made head with its doctrine of "The Two Swords"—church and empire. To the French mind "L'Etat" is something different from the body of Frenchmen or the French nation; and the old fashioned English idea of "God and the King" expressed a conception of an abstract sovereign power. It is strange that the people who have done most to alter the world's acceptance as to what government ought to be, have furnished no political creative mind, formulated no accepted philosophical basis for their government, and justify Bryce's dictum that the Americans have had no theory of the State, and have felt no need for one. "Even the dignity of the State has vanished. It seems actually less than the individuals who live under it—the nation is nothing but

so many individuals. The government is nothing but certain representatives and officials." Or as Tocqueville puts it: "As they perceive that they succeed in resolving without assistance all the little difficulties which their practical life presents, they readily conclude that everything in the world may be explained, and that nothing in it transcends the limits of the understanding." It is true that the Americans are people who would speak disrespectfully of the equator if they knew of its existence; yet no people is more profoundly influenced by a body of political doctrine, only their point of view is that they practice freedom, equality and self-government, and therefore suppose that there must be definite principles behind those usages. While the French with their national acuteness in analysis and generalization deduce the principles of liberty from the nature of man and then strive to work them out in practice, the American theory of government is to be sought, not in treatises on political ethics or the disquisitions of American statesmen, but in the acts of assemblies, votes of conventions, proclamations of presidents and governors, and the thousand instances of exercise of an accepted authority. The task of America has been to make popular government work even in despite of its own theories; to alter a body of little rural communities, each with its narrow interests, into a mighty republic with a complicated and highly organized government. The Americans have known how to keep the rights of the individual alive while consenting to limitations on the exercise of those rights; that is, to reserve to themselves the privilege of deducing theories from their own history, and then calmly overruling those theories.

Popular government might be held to be in itself a

theory; but the point of view of Americans has been to accept it as a foregone conclusion beyond any necessity of argument; hence American theories of government have been on one side an attempt to account for the visible exercise of democracy, and on the other to protect it by formulating it in a sacred principle, which to attack should be political impiety. The colonies were cradled in the midst of such discussions of the meaning of popular rights. Virginia was founded by liberal statesmen, whose opposition to the king was punished by the loss of their charter; Plymouth and Massachusetts were protests against the arbitrary government of the Stuarts. In the English revolution, they used to refer to the "New England Way" as a principle of government, which might be applied in the home country. Yet neither the first nor the second English revolution was founded on the rights of man: they were assertions of the rights of the Englishmen concerned, as hewn out for them by the action of centuries.

Of these great English principles, three in particular passed to the colonies: legal equality; sovereignty of the people; and the right to participate in government. The common law principle of equality before the law was one of the greatest achievements of the English race; for in the midst of a recognized social inequality it subjected all men to the same law, the same court, the same jury system (the "trial by one's peers" little disturbed the principle), the same judicial procedure, the same table of penalties. Quite as important for free government, the official was subject to that law, court, and procedure, even for acts done by order of a superior. This equality of legal status, in which England in the seventeenth century stood alone among nations, was accompanied by a method

of examining into charges of crime at that time without a rival in fairness, in openness and in speed. No system could prevent a Judge Jeffreys from hounding to death a Lady Alicia Lisle; but to do it he had to deny the legal presumption of innocence, admit testimony, which every lawyer knew was not competent, and coerce the jury; and in due time the unjust judge himself learned the might of English criminal law.

A second English principle, which did not square with the official assertion of the divine right of the king, was popular sovereignty, veiled in the struggle with the Stuarts under the form of a demand for the supremacy of parliament. After the Act of Settlement of 1701, the sovereigns of England had but a parliamentary title, and parliament and not the people was the visible political nation. In other hands such a system might have been destructive to the rights of the individual; but custom, tradition, the habit of referring to the charter of liberty, were such that the Englishman still says to his parliament "There shall thy proud wave be stayed."

The colonists doubtless held, as Tocqueville says, "that in every State the supreme power ought to emanate from the people; but when once that power is constituted, they can conceive, as it were, no limits to it, and they are ready to admit that it has the right to do whatever it pleases." As in England, it never entered the mind of the Americans that a representative government could destroy the rights which were their tradition and their glory.

In self-government the colonists improved upon their birthright of political theory. They accepted the principle of the English property qualifications; but in a country where land was cheap, the number of voters in proportion to the population outran any English experi-

ence. They took over the principle of representing political units and not masses of population; but their towns and counties were so numerous that they escaped most of the irregularities of the English borough and shire system. Their local governments, their town meetings, their frequent elections, gave them more opportunities to practice that acceptance of the will of the majority, which is the supreme test of popular government. In their minds, as Bryce says of the present generation "the belief in the right of the majority, lies very near to the belief that the majority must be right." They accepted an upper house, which was practically the representative of wealth; but they overawed it in many cases by the vigor of their lower house, headed by a speaker who was usually considered the leader of the opposition. They received royal governors and submitted to their veto power; but they found means to check them by the taxing power, which they enjoyed under the great English principle of "no taxation without representation," and by a playful way of withholding the governor's salary until he came to terms.

No inherited principle of government was more fruitful in the colonies than that of limitation on governmental authority, which was so deeply ingrained that none but the most occult theorists discerned the underlying absolutism of popular sovereignty. To the Englishman and the colonist alike, government was always and everywhere exercised under both written and unwritten safeguards. Parliament to be sure was sovereign in the sense that its acts could not be reviewed by the people as a whole or by any other organ of government; but the crown was checked by parliament, and after 1707 lost the veto power. The courts accepted as binding each successive

act of parliament as it came to them. Back of parliament, king and judges, was an unwritten body of principles which in the eighteenth century came to be called "The Constitution."

Colonial governments were limited not only by these restrictions but by positive written limitations of many kinds and of various degrees of supremacy. English public and private corporations were founded on written charters, setting forth their powers; and it was a recognized principle that acts outside those powers were *ultra vires*, which applied also to public officials of every kind. Such commercial corporations as the Society of Merchants Adventurers Trading to Flanders, of the fifteenth century, had charters which were not only revocable for proved violation, but commonly contained a provision that their acts must not be repugnant to the laws of England. The early English colonies were founded as trading corporations under similar restrictions. The Virginia charter of 1612, the Massachusetts Bay charter of 1629, permitted the development of little governments in the new world, which were subject to this double limitation and both of which were eventually overset by the cancellation of their charters because of alleged overstepping of their bounds. From their earliest origin, therefore, the colonists had before their minds this idea of restrictions; and carried into the local governments, which they set up, the same principle of *ultra vires*, so that town ordinances and county votes, outside the authority conferred by the colonies or contrary to colonial statutes, were null and void, and not binding.

In the later royal charters, extending from that of Maryland, in 1632, to that of Georgia, in 1732, the same principle was set forth: whether the colonial government

was to be made by proprietors or by the colonists themselves, their laws, usually by specification, sometimes by implication, must not contravene those of England. In all the colonies but two, the royal or proprietary governor had a veto power, and in most of the colonies the laws must be sent from time to time to England, there to be examined and if thought best to be disallowed. Another method of making sure that the colonial laws were kept in the desired subordination to the English was to appeal from the colonial courts to the privy council as a judicial body. In every part of their governments, therefore, the colonists were constantly made aware that they were subject to two kinds of law, the higher of which might nullify the lower. The whole course of colonial government was an acceptance and an adaptation of principles which, when fitted together in the new world, made something very different from the English government: freer from restraint in small and local matters; more subject to the overruling of superior authorities; yet all contained within the general English theory of the relation between the individual, the mass of individuals and the organization of the State.

This idea of constitutional limitations was further carried out in frames of government prepared inside the colonies. We are apt to forget that five of the original colonies—Plymouth, Providence, New Haven, Rhode Island and Connecticut—were founded without a charter and made their own governments; and that for Maryland, the Carolinas, Pennsylvania and New York written constitutions were granted by the proprietors. The fundamental Orders of Connecticut in 1639 provided that the little colony should be "guided and governed according to such Lawes, Rules, Orders and decrees as shall be made,

ordered & decreed, as followeth:—". John Locke's Fundamental Constitutions of Carolina provided a "form of government, to be perpetually established amongst us, unto which we do oblige ourselves, our heirs, and successors, in the most binding ways that can be devised;" and Penn in granting a frame of government in 1682 to his colony set forth that "no act, law or ordinance whatsoever" shall "alter, change or diminish the form or effect of this charter" without the consent of the governor and six-sevenths of the freemen. No people in the world better understood that not only legislation but a form of government might be subject to a still higher authority. People became accustomed to the idea that popular sovereignty was limited in its legislative, executive and judicial functions.

Though the colonists made immense progress in working out forms of government at once popular and protected from abuse, few of the active men in this process were interested in looking for the secret springs of their government. John Winthrop and William Penn and Alexander Spotswood and Benjamin Franklin were like the colonial carpenters of their time; they could build an excellent house without a plan carefully drawn to scale beforehand. Governor Pownall was almost the only administrator who wrote books on colonial government. Nevertheless there were some political philosophers, whose books were read in the colonies. One of these was the Englishman, Hobbes, whose three works, *Leviathan, Behometh* and *Philosophical Rudiments* are an attempt to account for royal government and to discover a principle which justifies non-resistance. Hobbes made a distinction between natural law which "doth always and everywhere oblige in the internal court, or that of conscience,"

and civil law, "those rules which the Commonwealth hath commanded." Much more important was that John Locke, who in 1669 drafted a hapless constitution for the Carolinas. To meet the argument for the divine right of kings, in his *Second Essay on Government* he worked out an elaborate theory that to escape from "a state of nature" in which men cannot protect their rights, the State was made by social contract, under which the the majority must rule and the people must ultimately be sovereign. He distinguishes between the community and government; he favors a separation of powers. These theories fell in with the preferences of the colonists who read and quoted Locke; but the only eighteenth century philosopher who had a vogue in America was Montesquieu, whose great work on *The Spirit of Laws* described a subdivision of government into three departments which he thought he found in England, and which actually existed in the colonies.

The early Puritans cared little for other men's books, and cited as their principal authority on government the Scriptures. The severe laws of Moses, which had not been enforced in any community since the destruction of the Jewish commonwealth by Titus, were made the basis of the early criminal codes of Massachusetts and Connecticut; and they sought to find authority for theocracy in the history of the judges and prophets of Israel. Another authority frequently quoted was John Calvin, from whose writings however, little comfort could be drawn for a theory that there was a domain of churchly power within which the civil magistrates were not to be obeyed. Neither the philosophers nor the Scriptures really applied to the conditions of the American colonies, and the text of none of them could be invoked to stop the progress

of popular government. The hard work of subduing the wilderness and of founding commonwealths absorbed the colonists and they sought only such theories as would cover what they were actually doing.

The Revolution seems a period of extreme theories, because people tried to find reasons for doing what they were determined on in any case; in reality the so-called revolutionary doctrines are almost without exception only an expansion and restatement of practices long familiar. It is a conventional belief that the revolution was based upon, if not brought about by, French political discussion of the period, particularly by Rousseau's doctrine set forth in his *Contrat Social*, which was first published in 1762. Montesquieu was read and appealed to, but there is no evidence to show that Rousseau was a force in this period; and the doctrines ascribed to him were really those of Locke, who was the quarry from which the revolutionary fathers drew both thoughts and phrases. The only eighteenth century publicist who had a marked influence in America was Blackstone, whose *Commentaries*, first published in 1765, soon went through several American editions. Blackstone, however, was describing what the English government had been or would be if proper principles prevailed, rather than the English government of his own time; and he was trying to defend that royal prerogative against which the colonists were revolting.

These writings had been for years floating in men's minds; it was the service of the Revolution to furnish a soil in which they might spring up. The purpose of those who favored independence was to show that whatever the nature of the union between the crown and the colonies, it was a compact and, therefore, could be rescinded if

broken by the other parties to the contract. The doctrine of social compact became necessary and was discussed and restated by a series of American political philosophers. The doctrine can be traced forward from the church covenants made in the little Puritan towns; and as late as 1743 a branch of the Presbyterian church in Pennsylvania broke off its relation with the parent church with a solemn renewal of the old Scottish covenant, declaring that "Covenants are of two kinds, civil and religious. 1. Civil Covenants are such as that of Abraham and Abimelech, Gen. xxi, 32, which was personal: and that of Joshua and the Princes of Israel with the Gibeonites, Josh. ix. 15, which was national. 2. Religious Covenants, of which there are divers."

In the revolutionary period, the whole doctrine of compact was recast. First, by James Otis' argument against the writs of assistance in 1761, then in Patrick Henry's plea in the Parsons Cause in 1762, the theory was laid down that there was a constitution of the British empire, under which the status of the colonies could not be altered without their consent; and later, more distinctly, that the imperial relation was a compact of government. When, in 1774, Patrick Henry exclaimed in the Continental Congress: "We are in a state of nature, Sir. * * * All America is thrown into one mass," he meant the state of nature portrayed by Locke, out of which was to grow a new political organization. When Thomas Paine in his *Common Sense* argued that the king had forfeited his authority, when Thomas Jefferson wrote in the Declaration of Independence that "governments are instituted among men, deriving their just powers from the consent of the governed" they too were stating the doctrines of compact held both by Hobbes and Locke; they too were preparing

the ground for a government of the old type, except that the English were to be in no way partners to the compact.

It was in part to clear the way for the compact theory that appeal was made to the state of nature with its corresponding body of natural rights; and one of the preoccupations of the revolutionary statesman was to make lists of those rights. A few of them appeared in the Declaration of Independence, many more in the State bills of rights, others in the amendments to the Federal Constitution. Among the rights thus enumerated is of course that of revolution, which was very distinctly stated by Jefferson in the Declaration of Independence. This is meant squarely to deny doctrines of non-resistance such as Hobbes set up, and to put revolution on the practical ground of grievances. The immediate purpose was to get away from England, and they left to the future the question whether the right of revolution, which was bringing the colonists together, would ever be invoked to tear the States apart.

The compact meant that all society was founded on agreement, as Jefferson neatly put it, on "the consent of the governed." This of course meant that till that consent was obtained, everybody had the rights derivable from nature. In order to form societies some of those rights must be given up, so as to make a common stock of "civil rights" available under a government, the protection of which was the consideration for going into the compact. Inasmuch as Englishmen had a sovereign who had to be accounted for, the old doctrine of compact somehow made out that he was one of the contracting powers and that the body of people was the other; and it was a favorite theory that it was the king and not the English people who had violated and, therefore, annulled the

compact. Under the new system of republican government, the theory had to be modified so as to make all the individuals parties to a compact among themselves. Strictly speaking, this would have left it within the power of any individual to abjure the compact if he believed that it was no longer observed by his fellows: practically the doctrine was limited at this point by the idea that the compact, once formed, constituted a sovereign people, in which the minority must accept the decisions of the majority within the limitations agreed upon, and that government should provide a machinery short of revolution for deciding whether the compact had been observed.

The purpose of the compact was the protection of the individual, and the theory of that time was that for that protection governments were instituted. Legal rank and privilege discriminated against individuals and therefore, could not form part of the compact. This meant that besides the traditional equality before the law there was to be political equality; and hence although Locke's social compact could be made to fit monarchy, the Revolutionary social compact worked out into the principles of freedom, equality and self government, which were so dear to the American people[1].

Such was the Revolutionary theory of government which, however abstruse, was direct and practical in the minds of its enouncers; and "the state of nature" did in a political sense apply to the condition of the American people in 1775, when the old colonial governments crumbled away before the popular rising, when Revolutionary conventions, in some cases with only a minority behind

[1]The best discussion of the compact theory in America is by McLaughlin: Social Compact and Constitutional Construction, in *American Historical Review*, v, 467-490, April, 1902.

them, claimed the powers of government, and when the American desire for a settled form of government neatly fenced in with a written document called for recognition. In the history of mankind, there has never been a closer approximation to the theory that men in a state of nature consciously make compacts with one another than in the legislatures and constitutional conventions of the Revolutionary period.

Beginning with New Hampshire in 1776, each of the former colonies provided itself with a written constitution, except Rhode Island and Connecticut, which already had such fundamental documents in their colonial charters. The first constitutions were made by colonial conventions and congresses and were looked upon as not much more than ordinary statutes. Then people accepted the principle that a constitution was more permanent and controlled statutes made under it; then came the idea that such a fundamental document ought to be formed by a special convention; and in 1780, Massachusetts went the one step farther by submitting the work of such a special convention to the voters. Since 1780 no constitution has been drawn up in any other way than by a special convention, and the greater number have been subjected to popular vote. By this easy and automatic process, which went through all its evolutions within four years, Americans found a way out of the difficulty of making a constitution which in its origin should be superior to the act of a legislature, and which should more directly express the sovereign will of the people.

Under these early constitutions the number of voters was still small, but the whole spirit of the revolution was toward making every adult man a party to the governmental compact. All the early governments were simple,

consisting of a legislature, a governor and a few other executive officers, and a small body of judges. The power of the people was exercised chiefly through the legislature, the members of which had commonly to show special property qualifications, and were elected like all the officers only for short terms. The senates were small and intended to represent property; the lower house was the popular body and defender of liberty. In the legislature was vested whatever power was not expressly withheld or conferred on other parts of the government. The constitutions all set forth one of the theories of the time, namely the danger of usurpation, and especially of military power.

Another safeguard was the doctrine of checks and balances, which Blackstone and Montesquieu were supposed to support, and which corresponded with the actual government in the old colonies; but which was clumsily worked out in practice. The judges in half the States were elected by the legislature, as were the governors in several cases, and the executive was disjointed and weak. Within fifteen years there was a reaction against the concentration of power in the legislatures which showed itself in three different ways: by giving to governors a veto power; by the germs of restriction on the legislature; and by action of the courts in annulling statutes because not according to the written constitution.

The Revolutionary theories on the whole worked out well in the State governments; they looked after individual rights; the constitutions were brief and general statements of principle, easily applied to concrete cases; they reflected the long experience of the colonies. The inevitable defect both of State governments and the State constitutions was that they could not provide for the

external interests of the States, nor for those common concerns in which they had all been engaged from the beginning of the Revolution.

For these purposes American theories of government had to be applied to a federal constitution, which underwent three stages, each an improvement on what went before; the Continental Congress, the Congress of the Confederation and the Federal Constitution of 1787. Like the State constitutions the federal document took advantage of the prevailing theories rather than created them. Outside of its federal character it was a plain adaptation of things that had worked well in England, in the colonies, in the State governments and in the previous federal union. It is marked by practicality and common sense. By using the method of a special convention, which was still very new, a great impetus was given to the doctrine that constitutions are sacred instruments, and an example was set which the world has often followed. The ratification by especially elected conventions again called to mind the solemn act of people who had it in their power to make or refuse the Constitution. The influence of the State constitutions in providing for the election only of the legislature and a few other officers was felt in the arrangement by which no federal official received a popular vote, except the members of the house of representatives. As for the protection of the individual, the Federal Constitution left that to the States: it took for its voters those whom the State admitted to its elections; it made at first little provision for the rights of individuals, which were supposed to be safeguarded elsewhere. There are in the Federal Constitution no new theories of personal rights or of the relation of government to the governed.

That the Constitution was a compact many people

asserted at the time, meaning of course "the compact" which people had been discussing for twenty years. Sometimes they meant that the Federal Constitution like those of the States was formed by agreement of individuals; sometimes they meant that the States as units were forming a common government, which would be as binding upon them as State governments were on the individual, subject only to the last resort of revolution. Apparently nobody used the term compact, then so familiar in political literature, as meaning an international treaty or agreement, which could be revoked at the will of any of the parties.

The great departure of the Federal Constitution from the State constitutions of the time was in the thoroughness with which the doctrine of checks and balances was applied. Within the defined field of federal power, congress had but a portion, and on some subjects the lesser portion, of authority. A strong and independent executive was set up, not chosen by congress, not responsible to congress, except by impeachment, and the head of a well organized hierarchy of executive officers. A strong and independent judiciary was appointed with a life tenure, and exercising large jurisdiction over federal affairs, with appeal from State courts: together with an implied power to review both State and national legislation. Not a State in the Union, then had or has ever had a government so well organized, so vigorous and so efficient as that provided by the Federal Constitution.

Since the adoption of the Federal Constitution, controversies over it have usually turned on the rival authority of States and Nation. The issues of popular government have almost all been raised in connection with State governments, in which between 1789 and 1860 new

democratic principles made their appearance and forced their way into public life. The first of these is the sovereignty of the people, which covers the right of the people to make and alter their own constitutions, their right to invoke governmental action for the general welfare and a right to distribute their authority in such manner as may seem to them best. This faith in the sovereignty, one might almost say the infallibility, of the people interested and aroused Tocqueville in the thirties, and he considered that the fundamental American ideas were the absolute authority of the community as expressed by public opinion, of which the will of the majority was the measure; a belief in self interest as a guide to uprightness and public spirit; the inherent right of self government; and the perfectibility of society through education and through a proper use of the powers of the State. The philosopher took alarm because the majority had "a prodigious actual authority, and a moral influence, which is scarcely less preponderant;" he descried the readiness with which the minority yielded its point when defeated; and he thought there was more danger from tyranny than from too much liberty. He was noticing what many observers since have pointed out, the fierceness and rancor of political discussion, followed by a sweet peace when the election is over or the legislature adjourns. The experience of the slavery contest, however, showed that there were questions on which neither side would yield.

Upon the principle of majority rule a growing limitation was the theory of constitution-making and the ever widening scope of new constitutions. Both in new documents and in the single amendments which were constantly dropping in, there was an agreement that the hand of the majority should be stayed. It was a period of new States,

each of which had to frame its constitution and use the experience of members of its conventions from other States. It was also a period of new constitutions by the older States, sometimes as often as every twenty years. Hence, from 1776 to 1860, more constitutions had been drawn up than there were calendar years. The effect has been to establish a theory that a constitution is the place for new legislation, that social reforms and changes of public interest must be registered from time to time in fundamental documents. Constitutions grew to be familiar political playthings and the ease of amendment and the frequency of radical change made them seem less different from ordinary legislation. As Mr. Roosevelt's friend put it they're discussing "some unimportant measure now; some local bill or other—a constitutional amendment."

All the new constitutions after about 1840 not only contained new limitations upon legislatures, but withdrew large domains of governmental power entirely from the State authorities; and in organizing new territories (as for instance Minnesota in 1849), congress followed the same principle by tying up the territorial legislatures, by forbidding them to pass any but general laws for controlling corporations. The State constitutions also laid down norms for the general welfare and narrowed the field of governmental action, by prohibiting lotteries, or the sale of liquor, and in many other ways.

Such restrictions, whether political or administrative, would have had very little effect but for the growth of a new principle of government, unknown in colonial times, opposed to the English practice and slowly developed in the first half of the nineteenth century. This was the power of the courts to establish harmony between consti-

tution and statute by declaring the lower form of law void, if it appeared not to be in accordance with the higher. A few instances of such decisions can be found between 1778 and 1789. In the Federal Convention it seems to have been expected that the State and United States courts would thus deal with State statutes; but it was many years before all the States accepted this authority of their own courts. In 1808, an Ohio judge was impeached for declaring a State statute void; and from 1824 to 1830, Kentucky was in an uproar over the same question. In the end the courts triumphed, because it was plain that otherwise the legislatures would interpret to their own advantage any new constitutional restrictions. Americans got into the habit of looking to the judiciary as the protector of the constitution, the restrainer of the other departments of governments, and the palladium of American liberties.

Still another method of keeping legislatures in check was the system of popular votes on legislative questions, which first appeared about 1820 in statutes allowing the people of a town or county to decide for itself such questions as the management of public schools, or the spending of money for internal improvements, or the selling of liquor; then upon general State questions, such as division into two States, the fixing of a seat of government, the creation of a State debt. It was a convenient method of allowing the different parts of the State to manage their local affairs in different ways; but it was also a means by which the legislatures shoved aside responsibility, and by which extra constitutional guarantees might be applied against the majority in the legislature. It was an attempt to apply town meeting methods to large States, and it carried the people farther and farther away from

the old notion that legislators were chosen, freely to exercise their own judgment for the public good.

Another novelty in American government was the principle of rotation in office. In colonial times, members of the assemblies, selectmen and county officials were often chosen year after year for a lifetime. When governors were made elective, they were rechosen in the same way, so that out of thirty-six years from 1780 to 1816 John Hancock and Caleb Strong served twenty-two years as governors of Massachusetts. But democracy could not admit that government was a profession, and after 1830 it was rare for governors to serve more than two or three terms, and legislatures changed rapidly. As more and more offices were taken out of the hands of legislatures and city councils and subjected to popular vote, the opportunities for rotation became more numerous; until by 1860 the fact that a man was in office was rather a presumption that he ought not to be reëlected. Many State constitutions forbade the choice of governors for more than a brief number of terms; and by declining to stand for a third term, Washington and Jefferson helped fix the principle on the national government. Till 1841 it was still a tradition that members of the president's cabinet might well be carried over by his successor, if of the same party; after that they, too, were engulfed by rotation.

From the rapid change of elective officers, it was a short step to the same principle for appointive officers, whether chosen by a legislature, a State executive official or a federal official. The four years, tenure act of 1820 for certain financial officers of the federal government went in the same direction. Meantime in the northern States, particularly New York and Pennsylvania, all appointive

officers were made to walk the plank when a new executive chief came in, and in 1829 rotation reached the national civil service. As the judges became elective, the principle began to apply to them; and after 1812, most of the new States made all their judges elective. In 1846 New York came over to that side. The terms of the judges were usually longer than those of other officials, and reëlections were more common; but they, like other officials, had to submit to the principle, foreign to the experience of mankind and contrary to the English and colonial practice, that experience in the public service makes a man no more useful to the public welfare.

Rotation was only one of several evidences that American democracy does not encourage administrative efficiency. What the French call "the government," what the English call "the administration" is little known in the United States. Each commonwealth is a law unto itself in such respects; and not a single one of the States in the Union has ever realized the necessity of an executive system like that which has been so preëminently successful in the federal government. Not a single city has a completely adjusted executive, in which all the departments are subject to the mayor. In some places there is a tradition of long service by experienced officials, such as the treasurer of the city of Cambridge, Mass., who has been elected every year for twenty-five years; but Americans simply do not understand that its principle of centralized responsibility, without which a railroad or an insurance company would go to smash, is just as necessary in matters of government.

Local governments, which often perform many services for the States might well be subject to organs of State supervision, and a few States have the beginning of such

a system. Even then the means of enforcing the law are commonly not within the reach of State officials: the usual remedy is the tedious and expensive method of going to the courts for injunctions, mandamuses and such writs; or of starting criminal prosecutions. Whether it is a result of the old theory that it was dangerous to entrust executive power, or whether it is a part of American indifference to expert advice and expert management, American democracy does not train up a class of professional public servants, whose long experience should entitle them to the respect of the community. To the notion that almost anybody can fill an office the American adds the theory that it is unnecessary to organize executive power so as to encourage the holders to use it wisely. Tocqueville, whose strong sense of orderly government was shocked by this wastefulness of national power, in despair says that "democracy carried to its farther limits is prejudicial to the art of government."

Perhaps the most interesting alteration in American political theory was the breaking up of the theory of a social contract, through the substitution of a new doctrine of compact. The old one fitted ill both with the history and the theory of federal government; for it meant a double set of contracts for each individual, or else one contract of individuals to form States and another of States to form the Union. Discovering this difficulty, Calhoun worked out a new theory, the essence of which was that by "compact" the fathers of the Constitution meant a voluntary agreement between States, each of which was entirely free, sovereign, and independent. Within the State, Calhoun's theory was that there was an organism and not an association; and that no individual could relieve himself from complete obedience to the State, except by revo-

lution. This change of ground, due primarily to a desire to find a theory that would prevent the federal government from interfering with slavery, shows the tendency of the times, namely, to sink abstractions and to find a theory of government, which would conveniently fit with what people wanted.

The political theory of the Civil War turned principally on federal questions, and the whole tendency was on both sides still farther to discredit a theory of compact and to lay stress on the unity of government. In the new constitutions which followed the war, this theory was emphasized. The authority of the State, allegiance to the State, protection of the State—these were the chief interest of publicists. Although the war turned on the question of the rights of the black man, it ended with a cutting down of the rights of the white man. During the struggle the common civil rights of freedom from arbitrary arrest, extra-judicial courts, and imprisonment on executive order, were the fate of thousands of white people. At the end of the war scores of thousands were disfranchised in the South and some hundreds to the ends of their lives remained, under the fourteenth amendment, excluded from any office of trust or profit under the United States. The whole process of reconstruction left on the minds of the nation the impression that the so-called natural rights were conferred by government and might be taken away.

This tendency showed itself in a new series of limitations on the suffrage. To be sure by State action and then by the fifteenth amendment 800,000 negroes were added to the electorate; but educational qualifications, which had already been enacted for Massachusetts and Connecticut, began to appear in other States; and after 1890 were adopted in several Southern States as a con-

venient method of shutting out the negro vote. The last community to retain an absolute property qualification, Rhode Island, dropped it in 1888, but other States put on small tax qualifications. Another effort to hedge in the majority was proportional representation, which was enacted in Illinois in 1870, upon the theory that representatives chosen in the usual fashion did not represent the minority. The only significant extension of suffrage was to women in some of the western States,—Wyoming, Idaho, Utah and Colorado. The American ideal, which had tended to hold that a share in the government was the natural right of every adult person, plainly turned to the view that suffrage was a privilege, which might be conferred and might be taken away as circumstances changed.

The want of confidence in legislatures, already strong, grew after the Civil War; and was strengthened by the excesses of the reconstruction governments and by the corruption at Albany, Harrisburg and other State capitals. Whatever else they had been, the legislatures up to 1860 were places for public discussion, in which members sought to win votes by argument and by appeal to party loyalty and to friendship; but in which the results were rarely prearranged. Since 1875, however, both the legislatures and congress have come to be places for registering decisions made outside the legislative hall; sometimes in committee rooms, very often in the Speaker's chamber, too frequently in the office of a political boss, and sometimes in the sanctum of a corporation. Legislatures have ceased to create or concentrate public sentiment; they have become clearing houses for the adjustment of claims, rather than places for appeal to reason; The speaker of the house of representatives in 1890 thanked

God that that house was no longer a deliberative body: he did not mean to shut out deliberation in public affairs; but thought the only way to get through the mass of business was that the question what bills should be pressed and what repressed, what measures should come to a vote and what should stick in committee, was one which the house of representatives was not fit to settle, and which must, therefore, go to a "steering committee." He had struck the same difficulty that besets State legislatures and city councils, namely, the want of a cabinet in the English sense—a committee of persons charged with the executive business of the government, and at the same time framers of legislation; and he was willing to be a member of an unofficial board for that purpose.

This impatience with legislatures was reflected in the numerous new State constitutions The most recent document of this kind, the Constitution of the State of Oklahoma of 1907 makes a treatise which fills a volume. It includes such detailed provisions as that druggists shall not sell liquor except upon "a bona fide prescription, signed by a regularly practicing physician, which prescription shall not be filled more than once;" that "the legislature may enact laws authorizing cities to pension meritorious and disabled firemen;" that any railroad passing within four miles of a county seat must build a branch to that county seat; that "the salary of the superintendent of public instruction shall be $2000." Easy would seem the task of the future legislatures of Oklahoma!

The change in the character of the legislatures is not a proof of hopeless confusion and lack of vigor, but a confused and indirect attempt to bring the executive and the legislative departments into proper working. The old theory of checks and balances has manifestly broken

down; for neither the veto power nor the authority of the courts over legislation has been thought sufficient to restrict the legislatures. The boss and the steering committee are devices by which the people who have to carry out the law and the people who make the law may come to a common understanding. In the national government, where the administrative machinery is the best in the country, it is still necessary for the president and the heads of departments to consult the legislative leaders, or to appeal to the public over the heads of the leaders. In the States, where the administration is weak and diffused, there is still more need for some authority, which will keep the laws and the executors of the laws in line.

In view of the rapid changes of the last thirty years, it is hard to say precisely what are the present theories of American government, although many able minds are bent upon the problem, and through the country a body of vigorous reformers are at work trying to arouse public sentiment to the need of political reform by appeals to "the American spirit." Certain tacit assumptions may, however, be pointed out which, without any attempt to combine them into a philosophical system, appear to lie somewhere in the back of the mind of the American citizen.

The American no longer believes in the social compact: it does not explain federal government and does not correspond to the historic growth of American institutions. Everybody recognizes that concession and a spirit of compromise is necessary both for organizing and carrying on government, but here as in the application of democracy, the negro and the dependent islander disturb the theory. What share has the non-voter anywhere and the Filipino

or Porto Rican in particular, in any visible political body involving the "consent of the governed."

The idea that government is an organism, that law has a force and a sanction not derived from previous consent, that the State is as old as society and not formed by society, seems to be unconsciously adopted as the basis of American government; and more and more people tend to accept the theory that all government in America—national, State, municipal or local, springs from one source, the American people as a whole, who choose to exercise their power through a variety of organizations, none of which is sovereign in itself, or more sovereign than another. All the clear-cut theories of organic government are, however, masked by the idea of limitation everywhere through the system, so that no man or body of men exercises full sovereignty upon any object.

Under this influence the old doctrine of checks and balances ought to be still in force; but that is breaking down under the practical necessities of government. As a matter of fact power is not neatly divisible into three separate departments. Whatever the provisions of the constitutions, some sort of understanding must be had between legislatures and governors or presidents, and between executive prosecuting officers and the judges. The legislative power, originally so strong and so unquestioned, is cut down, not only by constitutional limitations by the veto power and by judicial disallowance of statutes, but by the boss and the steering committee, devices through which a common understanding is sought between those who make the law and those who carry out the law. Mayors, governors and presidents have become initiators of legislation, which they press upon unwilling legislatures by the force of public sentiment. In some of

the cities the idea of checks and balances has so far gone into oblivion that under the so-called commission government, boards of three or five men are made mayor, cabinet, aldermen, common council and treasurer all in one.

The tendency to unify power is further shown by the rapid growth of the referendum, including in a few States, the initiative, through which constitutional amendments, or even statutes can be forced to a popular vote, where legislatures refuse to act. It is combined with systems for direct primary nominations, under public authority, which are intended to give the people a chance to be heard on nominations, as well as on elections. The method works well on simple propositions, stated separately; but when it comes to questions of detail and especially of discretion of choice between several methods of doing the same thing, the referendum operates against efficiency in government. It emphasizes the idea that the public officer of every grade is the representative of the will of the majority, whose policy must follow every turn of popular sentiment.

Nevertheless, there must be a machinery of executive and judicial officers and the conservative spirit of the American turns for defence and protection to those officials who, by their personal dignity, long terms of office and large authority may be expected longest to resist cross currents of public opinion,—that is, to the judges. In no country in the world have the courts ever exercised such political powers as in America. Any act of administration may become the basis of a suit in which the courts inquire whether it was an act legally authorized; for violations of the law, every official, even the president of the United States (after his term of office); may be sub-

ject to criminal prosecution; by their writs and inhibitions they control the official action of public officers even to the extent of forcing a board of aldermen to meet and vote an emission of bonds; they declare executive acts unconstitutional or illegal and therefore void; they set aside regularly attested statutes of legislatures and of congress. That is, by universal acceptance, the theory has become embedded in the American mind that the meaning of American government, the authority of law makers and law executors, is to be found ultimately in decisions of the courts; thus that department of government which in colonial times was weakest has, in a century and a half, become the accepted tribunal for expounding the American theory of government.

Whoever makes the ultimate decisions, the fundamental ideal of American government at the present day is still that combination of freedom, equality and self-government, which has been described above; but the theories as to the manner in which democracy can form government and keep it in operation have changed and are still changing. The conception of the compact is unworkable for federal government and does not correspond to the actual process of the growth of American institutions. The theory of organic government, founded on popular sovereignty, is hard to reconcile with the actual limitations upon every department of government. The most distinct American theory of government is not to theorize. As in the manufacture of bessemer steel, where all the carbon is burnt out of the liquid cast iron and then just enough carbon is restored to make it steel, so American democracy restricts and limits the authority of its public officials, and then bestows on them the powers necessary to national life.

THE EXECUTIVE COUNCIL OF PORTO RICO

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The problem of devising forms of government for the insular dependencies that came to the United States as a sequel to our war with Spain presented, among others, this very special aspect; that the governments to be created should at one and the same time provide for a maximum of efficiency and carry with them the largest possible grant to the people governed of powers to manage their own affairs. The securing of either one of these considerations alone would have been a simple matter. Had the United States acquired Porto Rico and the Philippines under no moral obligation to extend to them the principles of self-government, the maximum of efficiency could easily have been attained by simply vesting all governmental powers, legislative, executive and judicial, in a few appointed officials, and holding them to a rigid accountability for the manner in which they might perform their duties. Or, the grant of self-government could have been attained by providing for a liberal form of government under which the islands would be left free to work out their own destinies with all of the dangers of misrule and inefficiency that the experience of other Latin-American countries has demonstrated to be present. To accomplish both, meant that means had to be devised for harmonizing these two considerations, which in their nature were more or less antagonistic, and that, in consequence, the problem to be solved was vastly more

complicated and delicate than it otherwise would have been.

This special phase of the problem presented itself in an especially acute form in the case of Porto Rico. For in this island not only had the people reached a very considerable degree of civilization and culture, but the island came to us practically with the consent of the native population under the belief, and the more or less direct promise, that, under American sovereignty, it would attain to that degree of self-government which it had so long striven to secure from Spain.

After several years of administration by the United States military authorities, a civil government was given to the island by act of congress, approved April 12, 1900, and going into effect on May 1, following. If one will read carefully the provisions of this "Organic Act of the Island," which is generally known as the Foraker Act, after the name of its author, he will see running all through it that the meeting of this dual consideration constituted the one great problem that the framers of the act had constantly in mind. The key to this problem they found in the executive council of Porto Rico, the organization and functions of which it is the purpose of the present paper to describe. This body is probably the most original political institution that has been created by the United States in the action taken by it for the organization of governments in its dependencies. It is true that somewhat analogous institutions can be found in the systems of government of some of the British colonies, and, indeed, in some respects, in the governments created for the early acquisitions of territory by the United States on the mainland. In all of these, however, the conditions to be met have not been just the same, and

in the case of the executive council of Porto Rico, provisions have been made that differentiate it from all other seemingly analogous bodies, and give to it its own special character and functions. For this reason, and because, through it, a high degree of success has been achieved in solving a very difficult political problem, the executive council is entitled to take front rank among the interesting political institutions of our country.

Briefly, the Organic Act of April 12, 1900, provides for the following scheme of government for the island: Executive powers are vested in a governor and six heads of administrative departments—a secretary, an attorney-general, a treasurer, an auditor, a commissioner of the interior, and a commissioner of education—all nominated for terms of four years by the president of the United States, and appointed by and with the advice and consent of the senate. Legislative powers are vested in a legislative assembly composed of a lower house—house of delegates—of thirty-five members, elected every two years by the people of Porto Rico, and an upper house—executive council—of eleven members, six of whom consist of the heads of the administrative departments already enumerated, and the remaining five of persons likewise appointed by the president and senate for terms of four years. Of these eleven members not less than five must be native inhabitants of Porto Rico. Judicial powers are vested in a United States district court, with officials appointed by the president, a supreme court with five judges, likewise appointed by the president, and such other insular courts as the insular legislative assembly may create. The regular sessions of the legislature are limited to sixty days each year, though special sessions may be called by the governor. The approval of the gov-

ernor is required to all bills before they become law, unless passed over his veto by a two-thirds' vote of all of the members of each house. All laws enacted must be reported to congress, and that body, of course, retains full power, not only to modify such legislation, but to take such further action in relation to the government and administration of the island as it may see fit.

It will be seen from this brief statement of the framework of the government created for Porto Rico that the executive council is given a character essentially different from that usually possessed by the upper houses of legislatures in the United States. In the first place, its members hold office by appointment instead of by election; secondly, a majority of its members—six out of eleven—is composed of persons holding at the same time the positions of chiefs of executive departments; and, thirdly, provision is made for the apportionment of its membership between American and native representatives. The first of these special features is not especially novel. It not only exists in the case of many foreign governments, but can also be found in all of the earlier acts creating forms of government for the territory acquired by the United States on the mainland. The second, however—that providing for the union of executive and legislative powers in the same persons—while the established practice in many foreign countries, is novel insofar as American political practice is concerned. It is unnecessary in this place to thrash over again the relative advantages and disadvantages of giving to high administrative officials seats in the legislature. It should be stated, however, that the conditions that had to be met in Porto Rico gave peculiar validity to the arguments in favor of such a policy. The work to be done was essentially one

of administrative and governmental reorganization, in order that the island might have political institutions and a system of public law conforming, as nearly as local conditions would justify, to American principles and practices. It is difficult to see how this work of reconstruction could possibly have been performed with any thing like the success that has been achieved had the American representatives in charge of the administration of the island not been able to take an active part in securing the legislation necessary to effect the required changes in the law. Opinion on the part of all those having personal knowledge of the conduct of affairs in the island under American rule is, I think, unanimous that this provision for a union of the functions of legislator and administrator has proven one of the most satisfactory features of the system of government that has been created.

Turning now to the third feature—that of the apportionment of the members of the council between Porto Rican and American representatives—we come to the most delicate question that congress had to meet: That of determining the relative extent to which legislative power should be vested in the hands of American appointees or of native inhabitants of the island. As has been stated, the act renders it obligatory upon the president to see that the council is at all times so constituted that not less than five of its members shall be native inhabitants of the island. There is nothing in the law to prevent the president from giving more than this number of positions to natives, nor to prevent him from placing such native members at the same time in charge of the executive departments. Up to the present time, however, it has been the invariable practice of the president in making his appointments to limit the number of Porto

Rican representatives to the minimum required by the act, and to fill the remaining six positions by appointing Americans as heads of the six executive departments, and thus *ex officio* members of the council. The result of this policy has been to give to the American representatives not only a majority in the executive council, but to entrust to them the actual work of the administration of the affairs of the island. Although this has been the policy thus far pursued, it is nevertheless of importance to note that, as conditions justify, the president may, without further action on the part of congress, progressively transfer control over both administrative and legislative affairs to native Porto Ricans, either by appointing such natives to the positions of heads of executive departments, or by giving to them a majority, or even all of the seats in the council. The vesting of this power in the president of the United States is far preferable to that of attempting to regulate the matter rigidly by legislative act, since it permits the president to proceed, step by step, and easily to reverse his policy should it at any time prove that such transfer of power to the native inhabitants has not produced good results.

If now we attempt to appreciate the motives of congress in giving this special character to the executive council we will see how cleverly that body, through the adoption of these features, met the difficulty of creating a system under which might be obtained at one and the same time the maximum of administrative efficiency and the grant of local self-government, which, as has been pointed out in the introductory paragraphs of this paper, constituted the fundamental problem to be solved. Porto Rico under Spanish rule had never enjoyed any real experience in self-government. Notwithstanding the very con-

siderable degree of education and culture which its leading citizens had attained, neither they, nor the people generally, had ever had any real experience in the management of their own affairs. There was not only lacking a familiarity with, and practice in, legislative methods, but there was also absent that respect for the opinion of others, acquiescence in the decision of a majority, and habit of looking to the general good, rather than to party or personal advantage, that everywhere is essential to the successful working of complete self-government. This is far from saying that the people of Porto Rico are not capable of manifesting these qualities, but only that, at the time of the passage of the Organic Act, the Porto Ricans, due to the unfavorable political conditions under which they had lived, did not in fact have them. This being so, it would have been unwise to have turned over full legislative power, or even the control over legislative action, to them. Nevertheless, congress desired to go as far as it could in this direction. It, thus, created a legislature in which one of the houses is composed exclusively of members elected by the people themselves, and the other of members of whom at least five out of the eleven must be native inhabitants of the island; and, at the same time, conferred power upon the president so to constitute this latter body that in it, as well as in the lower house, the native Porto Ricans might have a majority or complete representation.

In practice, as has been said, the president has pursued the policy of appointing Americans as chiefs of the executive departments, and has thus placed in their hands both the direction of administrative affairs and a majority voice in the council. In this body their influence is further strengthened by the superior knowledge possessed

by them of the condition and needs of the various public services resulting from their immediate connection with administrative affairs and their greater familiarity with the American institutions used as models for much of the reconstructive work undertaken. If we consider the relative powers of the American and native representatives in the legislative assembly as a whole, however, it will be seen that, if anything, power is with the natives. They control absolutely one of the houses, while the Americans control the other only provided they are all present and are willing to vote as a unit. Back of the legislature, however, is the American governor, whose approval of all bills, unless passed over his veto, is required before they can become law.

The result of this system is as perfect a balancing of the legislative powers between the two classes as it is easy to conceive. In its practical workings it means that each class has an absolute veto upon the other. Either can throw out the bills of the other, but neither can secure the enactment of a law without it receives the approval of the other as well.

This fact—that no measure can become a law unless it meets with the approval of both Americans and Porto Ricans—constitutes the fundamental condition under which legislative action must be had in Porto Rico. It is hardly necessary to comment upon the importance of this fact. Through the establishment of this condition congress attained the most important object that it desired to accomplish: The elimination of the danger, on the one hand, that a people inexperienced in self-government and legislative methods might enact injurious legislation; and the provision, on the other, that legislation strongly disapproved of by the Porto Rican people

should not be forced upon them without their consent. In doing this it must be confessed that an exceedingly delicate machine has been created, one which experience has shown requires the exercise of the greatest degree of tact on the part of both parties to make workable. That it has worked, however, is evidenced by the fact that, through it, in the short space of six years, the larger part of the fundamental law of the land has been changed. Codes, political, civil and criminal, modeled upon those existing in the United States, have been substituted for the old Spanish codes; an entirely new revenue system has been created; the judicial system has been made over; municipal government has been thoroughly reorganized, so as to conform to American ideals; an educational system has been established; and scores of other important laws have been enacted. Notwithstanding this favorable record, it must still be recognized, however, that there is ever present the possibility of a conflict between the two houses, and that the occasion may arise when, owing to differences between the two, it will be difficult to secure wished-for action. In such case, however, with the exception of the passage of the general appropriation act, a subject to which our attention will now be turned, the injury will be negative rather than positive, the most critical period of the change from the system of Spanish to American law and government having now been passed.

In the foregoing contrast of the relative influence of the American and Porto Rican members of the legislative assembly we have treated the two houses as bodies of strictly coördinate powers. In point of fact, this is not the case. Although the sections of the act relating to the legislative assembly provide "that all local legislative powers" shall be vested in it, and "that the legislative au-

thority herein provided shall extend to all matters of a legislative character not locally inapplicable," other clauses apparently make a very important exception to this general grant of legislative power to the assembly as a whole by providing that the executive council alone shall have jurisdiction in respect to the determination of the number of employees in the several administrative departments, and the amount and manner of the payment of their compensation. These clauses, which are among the most important of the act, read as follows:

They—the six heads of departments—"in addition to the legislative duties hereinafter imposed upon them as a body shall exercise such powers and perform such duties as are hereinafter provided for them, respectively, and shall have power to employ all necessary deputies and assistants for the proper discharge of their duties as such officials and as such executive council." And,

"The salaries of all officials of Porto Rico not appointed by the president, including deputies, assistants and other help, shall be such and be so paid out of the revenues of Porto Rico as the executive council shall, from time to time determine."[1]

Nothing would seem to be clearer than that the purpose of these two sections is to take away from the legislative assembly as a whole the right to determine the number, compensation, and method of payment of officials in the executive departments, and to vest it exclusively in the heads of the departments themselves and in the executive council. To this interpretation, however, the house of delegates has from the outset urged the important qualification that, though the heads of the depart-

[1]The salaries of officials appointed by the president are fixed in the Organic Act itself.

ments and the executive council may have authority in respect to the making of appointments and the fixing of salaries, the legislative assembly as a whole alone has the power of voting the money necessary for rendering such appointments effective. The reply of the council to this is that the act provides not only that the salaries of the executive officials shall be "such," but "shall be so paid" as the executive council shall determine, and that this latter clause clearly confers power upon the executive council alone to determine the manner in which the salaries shall be paid, or, in other words, to appropriate the money required; and, furthermore, that, without the authority to make such appropriation, the power to employ assistants and fix their salaries would be meaningless and nugatory.

Although the contention of the house as a legal proposition has, thus, never been recognized by the executive council, it has nevertheless been largely acceded to in practice. The reasons for doing so are interesting as throwing light upon the general conditions with which the new government has had to deal in its practical operation. The necessity for taking a definite stand in relation to this matter arose at the first session of the legislature in 1901, when the subject of making appropriations for the ensuing year was taken up. The significance of the provisions that have been quoted was then for the first time fully appreciated by the Porto Rican leaders. They realized that if the administrative heads insisted upon a rigid interpretation of the powers conferred upon them by the act and denied to the house of delegates any voice in the determination of the organization of their departments and of the salaries that should be paid employees in them, that body would be deprived of one of the most impor-

tant functions usually pertaining to a legislative body. They claimed that if the house did not have this power of voting supplies it would have little control over the administration of affairs and that there would be but little justification for the existence of this body at all. While this is not so, as the house, under any interpretation, would have a coördinate voice in determining the general system of laws that should be in force in the island, it was nevertheless impossible to deny that such an interpretation would mean a very great limitation upon the powers of the lower house and generally of self-government by the inhabitants of the island. Partly in view of the very great discontent that would have otherwise resulted, but more especially because the American representatives at that time were particularly anxious to give the people of the island as liberal a government, and as great a participation in the management of their own affairs, as the law would possibly permit, it was decided, that, after the heads of the departments had carefully prepared the estimates for their respective departments, such estimates should be incorporated in a general appropriation bill, which, after action had been had by the executive council, should be sent to the house for its consideration; the theory being that, if the changes made by the house were accepted by the council, the number and compensation of employees would be, thus, in fact fixed by the council, and that the concurrence of the house in such decision, while possibly a matter of supererogation, would not in any way affect the validity of the action of the council itself. The precedent thus established has been followed at subsequent legislative sessions. In thus conceding this point the executive council has not, however, abandoned its special authority in

respect to this matter, as it is well understood that, should the house insist upon amending the bill so that it could not be accepted by the council, the right of that body to act independently would be revived and exercised.

Up to the present time we have been considering the executive council simply as one of the two houses of the legislature. This, however, far from comprehends the sum total of its functions. In addition to assembling for sixty days during the year in this capacity, it sits throughout the year in so-called "executive" sessions for the performance of other important and varied duties. It is the possession of these quasi-legislative and quasi-administrative functions that gives to the council its peculiar character, differentiating it from any other political institution with which American politics is familiar, and entitling it to be considered the most original feature of the action thus far taken by congress for the government of territory under its jurisdiction.

The possession by the council of these additional duties is due partly to express provisions of the Organic Act and partly to the action of the insular legislature itself. Attention should first be directed to those duties which are expressly entrusted to it by federal law. These consist of the approval of certain appointments made by the governor, the prescribing of regulations as to ballots and voting in the first election, and the granting of all franchises, privileges, and concessions of a public or quasi-public character. The first of these represents no departure from American practice. Although the Organic Act itself makes no mention of the approval of the executive council being required except in the case of the appointment of judges of the district courts, the same provision has been incorporated in acts of the insular legislature

providing for the appointment of officers generally by the governor. This provision is one of peculiar importance in Porto Rico, owing to the large powers that have been granted to the governor to fill vacancies in elective offices when such vacancies occur through death, resignation or removal. This applies to such important municipal offices as mayor and municipal councilmen as well as to insular positions. Taken in connection with the ample power possessed by the governor to remove incompetent and dishonest officials, it means that the governor, in conjunction with the executive council, can in this way exercise a very important influence over the conduct of public affairs, insular and municipal.

The second provision—that relative to elections—was necessary, inasmuch as it was not possible for congress itself to prescribe the exact procedure to be followed, or to frame proper regulations for the conduct of the first elections, and this power, consequently, had to be vested in some body. The result of this provision has been that the executive council, following the precedent thereby established, has had vested in it by the laws subsequently enacted by the insular legislature complete authority in, and supervision over, all elections. This work, including as it does the appointment of election officials and the promulgation of all necessary regulations governing the registration of voters and the conduct of the elections themselves, is a work of no inconsiderable magnitude. As Americans constitute a majority of this body, it has placed the responsibility for fair and honest elections directly upon the American appointees of the president. As these appointees, moreover, are not in any way connected with, or dependent upon, the local political parties, this policy carries with it the very desirable result of

having the election machinery controlled by a non-partisan body. To this provision must be largely attributed the fact that it has been possible to have in Porto Rico the fairest elections that not only that island but probably any Latin-American country has ever enjoyed.

The third function—that relative to franchises—has likewise proved to be one of great importance and has involved a steadily increasing responsibility and amount of labor. The language of the act regarding this point is "that all grants of franchises, rights and privileges or concessions of a public or quasi-public nature shall be made by the executive council with the approval of the governor, and all franchises granted in Porto Rico shall be reported to congress, which hereby reserves the right to annul or modify the same." This provision was further supplemented by others contained in a joint resolution of congress, approved May 1, 1900, providing that all railroad, street railway, telegraph and telephone franchises shall, before becoming effective, also receive the approval of the president," and that all franchises, privileges and concessions:

"Shall be subject to amendment, alteration or repeal; shall forbid the issue of stock or bonds, except in exchange for actual cash, or property at a fair valuation, equal in amount to the par value of the stock or bonds issued; shall forbid the declaring of stock or bond dividends; and, in the case of public service corporations, shall provide for the effective regulation of the charges thereof and for the purchase or taking by the public authorities of their property at a fair and reasonable valuation."

The motives dictating these provisions regarding the granting of franchises are not difficult to see. Congress, at the time of the passage of this act and joint resolution,

was possessed with a genuine fear, not at all unwarranted, that, following the inauguration of civil government, there might be a rush to the island of American investors of the promoter type whose aim would be the immediate exploitation of the resources of the island rather than its permanent development, and that a new and untried legislature, actuated by a desire for speedy results and subject to influences of all sorts, might commit the same errors that marked the early action of the American States and municipalities, when valuable concessions were granted without providing either for adequate compensation to the public, or for effective control in the interests of the public of the enterprises authorized. Further than this was the fact that, as the legislature would be in session only sixty days each year, not only would that body, with the pressure of other business to attend to, not have the opportunity for making the careful examination that should be given to such applications, but that unnecessary delay would be entailed in securing action upon those that it was desirable to grant. Congress, thus, very wisely decided, not only to throw around the granting of franchises all practicable safeguards, but to confer the whole authority to make such grants upon the executive council, a body permanently in session and composed of members the majority of whom were administration officials having adequate facilities and time for looking into each application coming before it.

The work and responsibility thus entailed upon the executive council extends far beyond what would at first sight appear. This is due to the fact that in granting franchises provision is always made for the subsequent effective regulation of the enterprises authorized, and for holding all rates of public service corporations sub-

ject to the approval and amendment of the executive council. The result has been that that body now finds itself compelled to exercise all the powers usually possessed by commissioners or boards of railways and corporations generally in the United States. It has, in fact, powers to fix rates and determine other conditions of operation possessed by few, if any, such boards. At the present time, for example, it has pending before it the fixing of a schedule or tariff of charges for the transportation of freight and passengers on the railways of the island and of the conditions of service generally that shall be complied with by the railway companies. This, and the granting of franchises, involves the holding of frequent public hearings, the taking of evidence, and the like.

More significant, however, than the imposition by federal law of these special duties upon the executive council, is the extent to which the insular legislature has voluntarily pursued the same policy. To such an extent has it proceeded in this direction that it has, in fact, converted this body into an institution having the special function of elaborating and supervising the execution of the laws enacted by it. As is well known, in the elaboration of legislation it frequently is not feasible to provide in detail for the regulation of every little feature that it is desirable to cover, and that, in consequence, it is necessary to draft the law in general terms and to vest the power in some official or body to supplement the act by the preparation and promulgation of regulations. Also it is frequently desirable to give to a piece of legislation an optional character, permitting a certain thing to be done upon certain contingencies arising or when conditions may justify. In all such cases the executive

council has been found to be an exceedingly available body for the exercise of such delegated and supervisory powers. One or two illustrations of this will serve to show the importance of this class of duties now devolving upon the council.

One such example has already been given, where the legislature, following the precedent of the Organic Act, entrusted to the executive council complete control and supervision over the conduct of elections. Another is found in the provision of the public health law which vests large powers in the director of health, charities and corrections to prepare and issue regulations regarding public hygiene, the sale of food products, and drugs, the conduct of bake-shops, the suppression of nuisances, etc., but provides that such regulations shall not become effective until approved by the executive council. This is an excellent illustration of where it is desirable that the detail work of preparing regulations shall be performed by the administrative department having direct control over, and technical knowledge concerning, the matters to be regulated, but that such regulations, having all the force of law, shall not enter into force until they had been passed upon by a quasi-legislative body.

Probably the most interesting example, however, of the exercise of delegated powers by the council at the present time is to be found in the authority that has been granted to it to authorize the granting of short-time loans from the insular treasury to municipalities and local school boards. These bodies are very much in need of certain public works, such as aqueducts, slaughter houses, public buildings, school houses, and the like, which, while in each particular case not calling for a sufficiently large sum to warrant the trouble and expense of issuing bonds,

yet requires more money at one time than the regular annual budgets can provide. To meet this situation, the insular legislature passed an act providing that, with the approval of the executive council and the governor, loans from the insular treasury might be made to these bodies. The council was at the same time given authority to determine the rate of interest to be paid, the terms of the loans, the conditions of repayment and all other conditions to be met. In a matter such as this it is evident that each transaction should be considered on its own merits. Whether the loan is or is not a wise one depends upon the nature of the work that it is desired to have performed and the ability of the municipality or school board to assume the financial obligations incurred without crippling its ability to attend to current needs. This requires an examination of the financial condition of the bodies requesting the loan. The procedure followed is for the municipality or school board to pass and forward to the executive council an ordinance requesting the loan, in which is set forth the purpose for which the loan is desired, the term of years for which it is to run, and provisions for its repayment in annual instalments. This ordinance, when received, is referred to the committee on finance, which investigates the application, making use for this purpose of the services of the bureau of municipal finance in the treasury department. In this connection, it may be said that a uniform system of accounting and reporting has been created under the administration of the treasury department, so that exact data regarding the financial history and condition of each municipality is immediately available. The committee having secured this information then reports, recommending either the approval, disapproval, or modification of the ordinance.

In the latter case the ordinance is returned to the municipality or school board for reënactment in its modified form.

Here is an excellent example of the utility of a body, such as the executive council, with quasi-legislative powers sitting in permanent session and including in its membership the chief executive officials of the government. While all of the data upon which to base action has to be secured through administrative officials, the determination of when loans may be properly made from the treasury is manifestly too large a power to confer upon any one executive official. The legislative assembly itself cannot well perform this work, owing to the short time at its disposal and the amount of other business that it has to transact, to say nothing of the delay that would necessarily result if action had to be postponed until that body was in session. In practice the system that has been established has worked absolutely without friction and has given splendid results. Several hundred thousand dollars have been loaned by the insular government in this way, and through this money the municipalities have been able to put through public works, and the school boards to build school houses, that otherwise they could not possibly have undertaken. In all cases the interest rate has been fixed at three per cent and the term of repayment generally five, and never more than ten, years. The insular treasury is perfectly protected, since the treasurer collects the property tax on behalf of the local bodies, and the payments of interest and instalments is made by his retaining from such collections the sums required to meet such obligations. This system is, thus, one mutually advantageous to the two parties: To the insular government in that it is able in this way to

keep a part of its surplus invested; and to the local bodies in that they obtain money for public improvements without trouble and at a much lower rate of interest than they could obtain it in any other way.

An analogous example of where discretionary authority has been vested in the council to determine the exact manner in which the provisions of a legislative act shall be carried out is found in the recent act of the legislative assembly directing the sale by the insular government of bonds to the amount of one million dollars for the purpose of providing money with which to make public improvements. As it was not possible at the time to determine which form of bonds would be most advantageous, and to fix certain other necessary features, the act provided that the executive council should have full authority to take all action necessary for carrying out the purposes of the act, that it should determine whether term or serial bonds should be sold; should have the powers of sinking fund commissioners, if provision was made for a sinking fund; should be authorized to appoint a fiscal agent in New York to take charge of the actual work of engraving the bonds, calling for and opening bids, etc.

It is not necessary to elaborate further regarding this phase of the activities of the council. It is sufficient to say that the illustrations that have been given by no means exhaust the powers of the council in this direction. Scarcely a session of the legislature is held that some new duty is not imposed upon it. Not the least interesting point regarding this matter is, thus, the fact that the present importance of the council is not due wholly to the arbitrary action of congress, but is the result of a gradual growth and due to the voluntary action of the people

affected. From the dual standpoint of its constitutional character and its actual activities; that is, as an appointive legislative body, in which the heads of executive departments constitute a majority of its members, and in the constitution of which provision is made for the representation of people of two countries; and, as a quasi-legislative and quasi-administrative body, permanently in session, for the purpose of exercising discretionary powers in the execution of legislative mandates, the executive council of Porto Rico possesses few analogues in other governmental systems. Certainly there are few, if any, other cases where equally comprehensive powers have been combined in one body with the same regard for conditions to be met and with the same success in operation that has here been achieved.

CONCLUSIVENESS OF ADMINISTRATIVE DETERMINATIONS IN THE FEDERAL GOVERNMENT

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The Federal Constitution provides that no person shall be deprived of life, liberty or property without due process of law, and vests in the Federal Supreme Court the ultimate power to determine what is due process. The legality of any interference with person or property may always be questioned in judicial proceedings, and therefore depends, in the last analysis, upon its conformity to a rule of law laid down by the courts.

The most usual method of disturbing the individual in the enjoyment of his personal and property rights is by judicial proceedings, and no person without authority of some branch of the government can constitutionally imprison him or permanently appropriate his property by any other means. Conceivably, the doctrine might have obtained that the government and its agents acting in official capacities must also have recourse to the courts in any undertaking affecting private rights. But "due process" has been interpreted as meaning process in conformity with certain fundamental principles, rather than any specific and required mode of procedure. The courts have held that, in certain instances, the government may interfere with private rights through the action of its administrative agents, and that such agents may be vested with the power of final and conclusive determination of the facts on which their action is based.

There are, of course, two limitations upon this administrative power, one legislative, the other judicial, or, more correctly, constitutional. The Constitution itself vests in the executive branch of the government, power to act in several matters which necessarily have an indirect effect upon private rights, (Luther v. Borden, 7 Howard 1), but the authority to determine finally questions directly affecting such rights must depend upon express legislative enactment.

Further, it remains for the judiciary to determine whether such enactment conforms to the requirement of the Constitution.

No thoroughly satisfying and all inclusive definition of due process has ever been evolved. We can best understand the real value of the constitutional provision by ascertaining what deeds may be done in its name.

An examination of the cases will show the theories upon which this administrative power is based, the distinction between determinations of fact and the decision of matters of law or application of rules of law to determined facts, the control which the courts retain over administrative procedure, and the limitations on the legislature in respect to the objects for which the power may be conferred.

I DETERMINATIONS AFFECTING PROPERTY

The leading case for the doctrine that "due process of law" does not of necessity require judicial proceedings is Murray's Lessee v. the Hoboken Land and Improvement Co., 18 Howard 272 (1856). It was there decided that congress might clothe the administration with power to determine the amount due from a government officer, and to enforce its collection by means of a distress war-

rant, issued by the solicitor of the treasury, without resort to judicial process. The decision was reached the more easily because such summary methods had long been employed and the legislative construction of the Constitution was therefore entitled to weight, and because the matter was one of the internal law of administration, where discretionary and arbitrary power in superior officers is essential to administrative discipline and effectiveness. "Due process" was defined as having the same meaning as "the law of the land," It was asserted that the law of the land had long authorized more summary procedure for the collection of public than for the collection of private debts, and the distinction between the two was declared to be founded on "imperative necessity."

The same principle was applied where the administration was given power to act summarily in collecting a tax from a citizen, not a member of the administration, by a warrant issued by the collector. Springer v. U. S., 102 U. S. 586 (1880). Precedent and governmental necessity were both invoked in support of the decision. The court said: "The power to distrain personal property for the payment of taxes is almost as old as the common law;" and, further on: "The prompt payment of taxes is always important to the public welfare. It may be vital to the existence of a government. The idea that every taxpayer is entitled to the delays of litigation is unreason. If the laws here in question involve any wrong or unnecessary harshness, it was for congress, or the people who make congresses, to see that the evil was corrected. The remedy does not lie with the judicial branch of the government."

It is not to be inferred, however, that the administration is subject to no judicial restraints. The govern-

ment secured title through administrative action, but to obtain possession, it was compelled to resort to judicial proceedings, in which such questions as the legality of the tax, the authority of the officer and the ownership of the land could be raised and passed on adversely to the administration.

In other instances, the finality of administrative determinations of fact has been sustained upon the principle that, when a matter is confided to a special tribunal, its decision within its authority is conclusive on all others. Johnson v. Towsley, 13 Wall 72 (1871). In this case, the expression was *obiter*, because the court reviewed matters of law upon which the administration was held to have erred, but the opinion is of value as an indication that the court based the administrative power on the general rule of law stated, and not upon an interpretation of the statute. In Smelting Co., v. Kemp, 104 U. S. 636 (1881), the principle was fairly laid down. To impeach the validity of a land patent, the defendant offered in evidence the record of the proceedings in the land department, as tending to show that, owing to the quantity of land in the claim and the method of locating it in order to obtain the patent, the land office had no authority in law to proceed as it did. The evidence was, however, held inadmissible, on the ground that the decision of the land department of facts within its jurisdiction was final and not to be reviewed by the courts. The patent was said to be in the nature of an official declaration by that branch of the government to which the alienation of the public lands under the law was intrusted, that all the requirements preliminary to its issue had been complied with.

The extent of the doctrine was stated by Mr. Justice

Field, as follows: "A patent, in a court of law, is conclusive as to all matters properly determinable by the land department, when its action is within the scope of its authority, that is, when it has jurisdiction under the law to convey the land. In that court the patent is unassailable for mere errors of judgment. Indeed, the doctrine as to the regularity and validity of its acts, where it has jurisdiction, goes so far that if in any circumstances under existing law a patent would be held valid, it will be presumed that such circumstances existed."

This case suggests and the preceding one decides that this power of final determination is confined strictly to the decision of those facts within the jurisdiction vested by the statute in the special tribunal. Though, by an erroneous finding of fact, the department may grant a patent under circumstances not contemplated by the statute, its action when based on a misinterpretation of law or the decision of facts not committed to its determination, may be set aside in judicial proceedings. To quote again from Smelting Co. v. Kemp: "On the other hand, a patent may be collaterally impeached in any action, and its operation as a conveyance defeated, by showing that the department had no jurisdiction to dispose of the lands; that is, that the law did not provide for selling them, or that they had been reserved from sale or dedicated to special purposes, or had been previously transferred to others. In establishing any of these particulars the judgment of the department upon matters properly before it is not assailed, nor is the regularity of its proceedings called in question; but its authority to act at all is denied, and shown never to have existed."

In these cases in the land department, however, owing to the fact that two conflicting claims may both be based

upon administrative determinations and because of the jurisdiction of equity in several matters dealing with real estate, there must always be a wider range of judicial review than in the other administrative determinations which we have to consider. As Mr. Justice Miller queries in Johnson v. Towsley, cited *supra*: "What conclusiveness or inflexible finality can be attached to a tribunal whose acts are in their nature so inconclusive?" In referring to the instances where equity has reviewed findings of fact, he repeats the doctrine previously established: "Undoubtedly there has been in all of them some special ground for the exercise of the equitable jurisdiction, for this court does not and never has asserted that all the matters passed upon by the land office are open to review in the courts. On the contrary, it is fully conceded that when these officers decide controverted questions of fact, in the absence of fraud, or impositions, or mistake, their decision on those questions is final, except as they may be reversed on appeal in that department. But we are not prepared to concede that when, in the application of the facts as found by them they, by misconstruction of the law, take from a party that to which he has acquired a legal right under the sanction of those laws, the courts are without power to give any relief." Chief Justice Marshall had held in Polk's Lessee v. Wendall, 9 Cranch 87 (1815), that when North Carolina had granted certain lands to the United States, reserving the right to complete incipient grants to individuals, the question whether a certain grantee of the State had an incipient title at the time of the cession, went to the title of the grantor and the jurisdiction of the officers passing upon the grant, and remained therefore a question of law for the court. Likewise in Silver v. Ladd, 7 Wall 219, the court reviewed the

interpretation of law by a superior officer in the land department, laid down the correct doctrine and ordered the land conveyed to the one rightfully entitled to it.

The court recognizes the same power of finality in special tribunals to determine facts arising in customs matters. In 1846, in a suit against a collector where the jury appraised the goods at the invoice value and the collector had followed the higher estimate of the appraiser, it was held that the finding of the appraiser governed the case Rankin v. Hoyt, 4 How 327.

The case of Bartlett v. Kane, 16 How 263 (1853), is stronger still, for there, the court denied any review of the appraisement, although it was of the opinion that the method of chemical analysis employed to ascertain the value was not to be relied upon as a safe guide, and was inferior to the plan of fixing the value by ascertaining the cost price in the markets of its production. The court remarked that the appraisers were appointed with power "by all reasonable ways and means" to appraise the value, and that the exercise of the power involved a knowledge, judgment and discretion, and then invoked the general principle "that when power or jurisdiction is delegated to any public officer or tribunal over a subject matter, and its exercise is confined to his or their discretion, the acts so done are binding and valid as to the subject matter." The necessity for the decision was justified in the following language: "The interposition of the courts in the appraisement of importations would involve the collection of the revenue in inextricable confusion and embarrassment."

In Hilton v. Merritt, 110 U. S. 97 (1884), it was held that "in the absence of fraud, the decision of the customs officers is final and conclusive, and their appraise-

ment, in contemplation of law, becomes, for the purpose of calculating and assessing the duties due to the United States, the true dutiable value of the importation." The plaintiff offered evidence showing the true value of the goods and the experience of the appraisers and the care exercised by them in making the appraisal, but the court ruled that it was immaterial, as it did not tend to show that they were assuming powers not conferred by the statute, but merely carelessness or irregularity in the discharge of their duties. The denial of the right to judicial review was sustained on the principle laid down in Murray's Lessee v. Hoboken, etc., Co., and the court observed that "if in every suit brought to recover duties paid under protest, the jury were allowed to review the appraisement made by the customs officers, the result would be great uncertainty and inequality in the collection of duties on imports. It is quite possible that no two juries would agree upon the value of different invoices of the same goods."

The power vested in the customs officials was supported on somewhat different grounds in Buttfield v. Stranahan, 192 U. S. 470 (1904), where the court stated that the plenary power of congress over foreign commerce carried with it absolute power to exclude articles of any particular grade, and that, as no one had a vested right to import, the determination of an administrative board that any specific articles were not up to the standard was in no sense a taking of property, but simply a determination of whether the conditions existed, which conferred the right to import. Under the doctrine of Field v. Clark, 134 U. S. 649 (1891), it was held proper to delegate to the board the power to fix the standard and to apply it, and further, that its exercise was not conditioned upon the

granting of a hearing to the individual whom the determination was to affect. The administration was allowed to enforce its own determination without judicial process, as in the oft-cited case of Murray's Lessee v. Hoboken, etc., Co.

The same principle underlies the series of cases sustaining the power vested in the postmaster general to issue fraud orders barring the mail of concerns whose business he deems to be fraudulent, though they are by the statute denied the right to a judicial review of the facts on which his decision is based. In Public Clearing House v. Coyne, 194 U. S. 497 (1904), the court say that, as the postal service is no necessary part of the civil government, but a public function assumed for the general welfare, congress may annex to its use such conditions as it chooses, classify the recipients of mail matter, and forbid the delivery of letters to such as in its judgment are making use of the mails for the purpose of fraud or deception. As in the case of Buttfield v. Stranahan, the determination whether a specific article or individual is within the class excluded from the privilege by congress, is held properly vested in the administration, though the statute provides no hearing for the person whom the determination is to affect. The case rests also upon governmental necessity: "If the ordinary daily transactions of the departments which involve an interference with private rights, were required to be submitted to the courts before action was finally taken, the result would entail practically a suspension of some of the most important functions of government. * * * It would practically arrest the executive arm of the government if the heads of departments were required to obtain the sanction of the courts upon the multifarious questions arising in their departments,

before action were taken, in any matter which might involve the temporary disposition of private property. Each executive department has certain public functions and duties, the performances of which is absolutely necessary to the existence of the government, but it may temporarily, at least, operate with seeming harshness upon individuals. But it is wisely indicated that the rights of the public must in those particulars override the rights of individuals, provided there be reserved to them an ultimate recourse to the judiciary."

As we have before noted, this ultimate recourse is always available. The limitations upon the reviewing power of the courts are, and must be, in the last analysis, self-imposed ones—a restraint which may be thrown off whenever the spirit of the Constitution demands it. But the cases establish clearly that the court will still withhold relief when the only grievance is that the individual did not have a judicial hearing upon the facts on which the administration based its action in applying the general law which is the source of its jurisdiction and authority.

But those facts, when found, must be such as to justify the action of the administration. Whether upon a determined state of facts the action taken conforms to the dictates of the statute, remains a question for the courts. School of Magnetic Healing v. McAnnulty, 187 U. S. 94 (1902). In that case, the postmaster-general, instead of investigating the actual conduct of the complainant's business and holding it fraudulent, based his action in issuing the fraud order, upon the established fact that they offered medical advice founded on the proposition that the mind is largely responsible for physical ailments, and the race possesses the power through proper use of the mind to remedy those ills. The court observed that the

statute never meant the question of fraud to depend upon the opinion of the postmaster-general as to the efficacy of any particular method of healing, and ruled that since the facts found would in no aspect be sufficient to justify his action under the statute and the evidence before him in any view of the facts failed to show a violation of the law, his determination that such violation existed was a pure mistake of law on his part, against which the complainants were entitled to relief.

But the courts will not invariably review the determination of the administration simply because the complainant disputes the correctness of the application of admitted principles of law to a determined state of facts; or rather, the courts will not invariably substitute their application of the law to the facts for the application of the administrative officer. In Bates & Guild Co. v. Payne, 194 U. S. 106 (1904), it is said: "Where there is a mixed question of law and fact, and the court cannot so separate it as to show clearly where the mistake of law is, the decision of the tribunal to which the law has confided the matter is conclusive." The necessity for the rule is again invoked: "The consequence of a different rule would be that the court might be flooded with appeals of this kind to review the decision of the postmaster-general in every individual instance." But the court insists on its power to review such determinations, and must in fact consider the law and the facts if properly raised, though they will substitute their determination for that of the postmaster-general only when clearly of the opinion he was wrong.

The construction of the statute given by the administrative officers has a certain presumption in its favor, but as the court says in Houghton v. Payne, 194 U. S. 88 (1904): "The doctrine does not preclude an inquiry

by the courts as to the original correctness of such construction. A custom of the department, however long continued by successive officers, must yield to the positive language of the statute." In that case, the postmaster-general reversed the ruling of his predecessors as to the classification of certain mail matter, and, though it was strongly urged that the doctrine of contemporaneous construction should be applied, the court ruled that such doctrine as a rule of interpretation was not an absolute one, and held that the subsequent ruling of the department was too clearly the one in conformity to the statute, to justify them in approving of the former classification, notwithstanding the length of time such classification had obtained.

II DETERMINATIONS AFFECTING PERSONAL LIBERTY

The power of congress to regulate commerce includes the bringing in of persons as well as the importation of goods, and so statutes vesting in the administration the final determination of whether an alien seeking admittance is within the class lawfully entitled to enter were sustained from the first. It was even held that in reaching this determination the administration is not required to take testimony. Ekiu v. United States, 142 U. S. 651 (1892). The claim was advanced that if the administration excluded an alien who by some law or treaty was of right entitled to enter, they exceeded their jurisdiction, and that this illegal action, if it resulted in restraint of liberty, presented a judicial question for the decision of the court. The supreme court answered that the view, if sustained, would bring into the courts every case of an alien who based his right to enter on some law or treaty, and reiterated that the question of whether the individ-

ual seeking admission was entitled of right under some law or treaty to enter had been constitutionally committed to named officers of the executive department for final determination. Lem Moon Sing v. United States, 158 U. S. 538 (1895).

No other decision is possible unless the courts are to review every administrative determination of fact. For if the decision of the administration is in fact erroneous and their action is based thereon, the result in the specific case is contrary to that designed by the statute. But the same would be true if the court reviewed the facts and reached an erroneous decision. There must, in the nature of things, be somewhere an authority whose determination of a fact establishes conclusively its existence so far as governmental action based thereon is concerned. From the first, the rule of the court was that this final power could be vested in the administration in those cases where governmental necessity required it and where a different rule would swamp the courts and render difficult or impossible the performance of their regular and more strictly judicial functions. So it was settled that the jurisdiction of the administration over the subject matter of aliens seeking admission gave them in fact power to exclude one whom the law was not designed to exclude.

In a subsequent case, it was argued on behalf of the immigrant, that though the jurisdiction of the administration might extend beyond aliens excluded by law or treaty, to aliens generally, it extended no further. It was insisted that if the question involved was whether the individual seeking admission was in fact an alien, it put in issue the jurisdiction of the administration to act at all, and therefore compelled the court to reëxamine

the facts and itself determine whether the petitioner was within the class with whom the administration was intrusted with power to deal. The court answered that the statute meant to give to the administration jurisdiction to decide the question of citizenship and to make that decision final. It evaded the constitutional question involved and decided simply that, at any rate, the petitioner could not obtain a judicial review until he had exhausted the remedies vested by the statute in the administration itself. United States v. Sing Tuck, 194 U. S. 161 (1904). But soon there appeared a petitioner who had been denied admission by the highest administrative officer, and who based his right to enter on the fact that he was a native of the United States and therefore a citizen, and on the principle of law, that, under the Constitution, congress could not give to the executive department the power to exclude a citizen returning to his native country. The court now took the last ditch. It followed its interpretation of the statute in the Sing Tuck case and declared that the act purports to make the decision of the department final on whatever ground the right to enter the country is claimed, as well when it is citizenship as when it is domicil and the belonging to a class excepted from the exclusion acts. The contention of unconstitutionality was dismissed by the assertion that, though to deny entrance to a citizen is to deprive him of liberty, with regard to him (*i. e.*, with regard to a citizen of Chinese parentage seeking admission at the frontier), due process of law does not require a judicial trial. United States v. Ju Toy, 198 U. S. 253, (1905).

There was a vigorous dissent by Mr. Justice Brewer, and the case has found few to do it reverence. The lower court had granted the petitioner a judicial hearing and

determined that he was in fact a citizen; so the result was, as the dissenting opinion set forth, that one who has been judicially determined to be a free-born American citizen[1] may, by the action of a ministerial officer, be punished by deportation and banishment without trial by jury and without judicial examination. If this means that the court lays down the rule of law, that a citizen may be banished by a ministerial officer, without right of appeal to the courts, it is indeed a remarkable interpretation of the phrase "due process of law." But such is not the law of the case. It decides simply this, and no more:—that whether a Chinese person who seeks admission to this country, was born here or not, may, under certain limitations not yet defined, be determined finally by officers of the administration, even though, on the determination of this fact, depends his citizenship and his right to enter.

It is submitted, that as a rule of law, this decision is absolutely necessary if we are to have an efficient exercise of the power to determine who shall enter this country, and if our courts are to be left free for the business which confessedly belongs to them. The decision of questions seriously affecting private rights must be committed to some fallible tribunal. Due process of law can rightfully demand no more than that the procedure devised for reaching this decision give to the individual every opportunity to establish his rights, consistent with maintaining the orderly and efficient administration of government. The public welfare is entitled to as much consideration as the private right; and the exigencies of

[1] At the hearing in the court below, the government declined to offer evidence as to the nativity of petitioner, insisting upon the power of the administration to determine the fact finally; which robs the judicial determination of citizenship of some of its force, so far as the particular case is concerned.

national well-being have been rightfully deemed an important factor in determining whether the final decision of an administrative board is due process of law. The courts have regarded the cases, not as isolated examples of governmental activity, but as instances of many similar ones, and have in all cases been influenced by the effect a contrary rule would have on the work of the judiciary and the attainment of the ends which the legislature and the court deem essential to the public welfare.

These considerations apply with equal force to cases where the right to enter is based on citizenship. Once that matter were open to judicial review, each incoming celestial would allege the fact and raise a cloud of yellow witnesses to prove it. The principle has long been unquestioned that the privilege of judicial determination of facts affecting private rights must yield before public necessity, and that administrative action absolutely essential to national well-being is due process of law within the meaning of the Constitution. The Ju Toy Case does not transcend the boundaries previously established.

The true content of the decision will appear more clearly from a consideration of the arguments urged against it.

Mr. Justice Brewer, in the dissenting opinion, refers to decisions upon administrative determinations in the land department, to show that questions of fact upon which the jurisdiction of the administration rests are never regarded as settled by its rulings. But the cases cited do not decide that the administration may not be vested with final determination of a fact, which, if found one way, gives them jurisdiction and authority to act, and, if found another way, deprives them thereof. They are instances, rather, of the familiar principle, that in apply-

ing rules of law to facts found, and in determining what classes of facts are committed to the administration for decision, their action is subject to judicial review. Though the statute authorizes them to dispose of timber lands and not of swamps, or vice versa, they may decide finally to which class a given parcel belongs. Whether, whatever its nature, their action is within their jurisdiction and justified by the statute, remains a question of law for the court. The nature of the land may be determined by a mere physical examination or a consideration of testimony as to its physical characteristics; but to know whether it is public land or has been set apart for sale, requires a reading of the statute and an interpretation of its provisions to determine their applicability to the land in question. So in the customs matters to which the dissenting opinion turns for support, it is held that the administration may decide finally the value and quality of goods imported (Buttfield v. Stranahan). The court reviews a determination that they are dutiable at a certain rate, because that involves an application of the statute to the facts. Similarly, the place of birth is a fact, the finding of which the court will not review. Whether the proper methods are used in reaching the finding, and whether, conceding the place of birth, the immigrant is an alien and the action of the administration is justified, remain questions of law on which the court will have its say. The very case from which Mr. Justice Brewer quotes (Smelting Co. v. Kemp) in another part of the opinion, puts the distinction clearly. To the general rule as to the presumption in favor of administrative action, it states the exception that if the patent be issued without authority, it may be collaterally impeached in a court of law, and then adds: "This exception is subject to the qualifica-

tion, that when the authority depends upon the existence of particular facts, or upon the performance of certain antecedent acts, and it is the duty of the land department to ascertain whether the facts exist, or the acts have been performed, its determination is as conclusive of the existence of the authority against any collateral attack, as is its determination upon any other matter properly submitted to its decision."

Mr. Justice Brewer also seeks comfort from cases, holding that when judicial proceedings in one State are asserted as the basis of rights in another, the court may reexamine and contradict the facts necessary to show jurisdiction set forth in the recital of proceedings by the original forum. The analogy is faulty, because no authority with power has ever sought to vest in the first tribunal the final determination of the facts on which its jurisdiction depends. The creature of one sovereign power cannot by its recitals bind the creature of another. When Massachusetts is asked to enforce a right based on judicial proceedings in Pennsylvania, that commonwealth may ascertain for itself whether there were in fact judicial proceedings in Pennsylvania. The constitutional provision does not require it to give full faith and credit to everything another State claims to be a judicial proceeding. In the immigration cases, the legislature is a power which may, if due regard is shown for private rights, determine the jurisdiction both of the administrative board and of the judiciary, and it may say that one department must accept as final the determination by the other of such facts as the legislature commits to it.

If the Ju Toy Case had decided that the administration had no jurisdiction to act save in cases of aliens, but that it could have the last say on the question whether

the individual was an alien, then it would be open to the objections urged against it, that it allowed the administration to determine the very fact on which its jurisdiction was conditioned. But the doctrine of the case is in harmony with the principle that it is for the courts to determine what limits the legislature has placed upon the jurisdiction of the administration, and whether its decision is within the confines of those limits. The court in the Sing Tuck Case had ruled that congress did not mean the jurisdiction of the administration to be conditioned on alienage but meant to consign to it the final determination of the facts on which depended citizenship. The Ju Toy Case was concerned primarily with the constitutionality of the act interpreted in that fashion. It may well be that the language of the statute did not warrant the interpretation which the court put upon it—but that concerns the rhetorician more deeply than the student of administrative law. Whatever the correct interpretation of the words employed, the silence of congress since 1903 is a fair indication that the court caught the meaning the statute was intended to convey.

III JUDICIAL CONTROL OVER ADMINISTRATIVE PROCEDURE

The Ju Toy Case came before the supreme court, not on appeal from the circuit court dismissing the writ, but upon a certificate presenting certain definite questions of law. The court in making answer say: "We assume, as the questions assume, that no abuse of authority of any kind is alleged." The questions assume that nothing more than the fact of the hearing and the finding that he was not born in the United States appears to show that executive officers failed to grant a proper hearing, abused

their discretion or acted in any unlawful or improper way upon the case presented to them for determination. They ask whether the court shall treat the finding of fact by the executive officer as final and conclusive "unless it be made affirmatively to appear that such officers in the case submitted to them, abused the discretion vested in them, or in some other way, in hearing and determining the same committed prejudicial errors." So, though it is held that the administration may be vested with the power of final decision, it is by no means set forth that in reaching that determination it is subject to no judicial restraints. The case explicitly leaves open the question what the decision would be if the petitioner alleged that the board abused their discretion or in some other way committed prejudicial error.

We must, therefore, ascertain the restrictions imposed upon the administration as to the methods it must pursue in arriving at its determination, and the limits of the fields in which such power may be exercised, by a consideration of other cases. It is clear that when the prayer is for a writ of *certiorari* in addition to one of *habeas corpus* the court will examine the evidence and the findings of the board. Where no question is raised as to the methods adopted in securing evidence and reaching a determination, the decision of the facts by the administration will not be overturned, except where the court holds as a matter of law there was no evidence on which the conclusion could be rested. Turner v. Williams, 194 U. S. 279 (1904). So, while the court will not judge of the truth or falsity of the evidence, it denies to the administration the final determination of its sufficiency as legal proof.

It is difficult to formulate precise rules as to the re-

quired administrative procedure, for in the decided cases, the methods pursued have been held due process. In a dictum in Yamataya v. Fisher, 189 U. S. 86 (1902) Mr. Justice Harlan says that the court "must not be understood as holding that administrative officers, when executing a statute involving the liberty of persons may disregard the fundamental principles that inhere in 'due process of law' as understood at the time of the adoption of the Constitution." One of these principles he declares to be the right to a hearing of some kind in respect to the matters upon which that liberty depends. We saw, however, that in determinations affecting property, a statute was not unconstitutional for failure to make provision for a hearing (Clearing House v. Coyne); nor did the absence of a hearing render unconstitutional, administrative action where the determination was reached by a comparison of a specific article with an established standard (Buttfield v. Stranahan); and further, that in hearings upon questions where personal liberty is involved, the taking of evidence is not indispensable (Ekiu v. U. S.). But it does not appear that a hearing was denied in the Coyne Case, nor that evidence was offered before the inspector in behalf of Miss Ekiu. So we may infer from the language of Mr. Justice Harlan in the Yamataya Case, that the doctrine of the court is, that in matters affecting personal liberty, at any rate, the individual must be granted an opportunity to be heard on the questions in issue. In reaching its determination, however, the board acts not as a court, but as an instrument of the executive power, and is not restricted by the doctrine of *res adjudicata*. It may, when authorized by statute, reëxamine the facts at a subsequent hearing involving the same questions between the same parties, and reverse its former

decision. Pearson v. Williams, 202 U. S. 281 (1906). But the Yamataya Case suggests that the same restrictions govern its procedure at a rehearing as before.

Mr. Justice Brewer deemed the administrative action in the case of Ju Toy inconsistent with the requirements of due process, because of the severity of its procedure. But that question was not before the court. The sole ground on which the petitioner sought release was that he was a citizen and that therefore his right to enter could not be committed to the executive department for determination. Whether it may under the Constitution be committed to the administration at all, and whether the statute purporting to vest the power fails to provide sufficient guaranties for the protection of the personal rights involved, are two distinct questions—the first only of which was raised in the case. It is to be noted that the court in the Sing Tuck Case differs from Justice Brewer in their view of the procedure established for the administrative hearing. They consider that in case of appeal from the inspector to the secretary, new evidence, briefs, etc., may be submitted, and that the whole scheme is intended to give as fair a chance to prove a right to enter the country as the necessarily summary character of the proceedings will admit. So that if a petitioner should present the issue that such fair chance is in fact denied, the court may examine the matter and agree with Mr. Justice Brewer that the procedure is not due process.

Finally, if the question of alienage depends upon a matter of law, the question is always one for the court, and judicial relief will be granted although recourse is not first had to the administrative remedies offered. Gonzales v. Williams, 192 U. S. 1 (1904).

IV THE OBJECTS FOR WHICH THE POWER MAY BE CONFERRED

Approaching the whole question from the standpoint of a petitioner judicially determined to be a citizen, the Ju Toy decision at first blush is monstrous. But starting with the presence of a horde of immigrants on the frontier, whom the proper authority in the government has determined we must exclude, if our national ideals are to be preserved, the case has more to justify it. The demands of public necessity collide with the possible infringement of private right, and, rightly or wrongly, it has been determined to be law in the United States that the exigencies of the national welfare are to have the right of way.

It is the doctrine of the supreme court that such exigency alone justifies the exercise of this power. It has been sustained in matters which relate to those departments of the government established for promoting public welfare in ways to which the citizen has no vested right, matters requiring uniformity of decision if there is to be equality between different individuals affected, and matters where prompt action is essential if the necessary end is to be attained. Congress has not been prone to bestow such power in other instances, so we have few judicial decisions describing the boundaries of the field where it may have play. In the case of immigration, however, the court has held that the necessity which justifies the administrative power does not extend beyond the prevention of residence here of the undesirable classes. Though congress may provide summary means for keeping the objectionable individual out of the country, it cannot employ those methods to punish the intruder for seeking to enter or for sojourning without right. Wong

Wing v. United States, 163 U. S. 228 (1896).[2] Another limitation has been laid down recently in a decision by Judge Grosscup in the circuit court of appeals, seventh circuit, which holds that congress may not by a change of the rules of evidence deprive a *resident* Chinaman, who claims to be a citizen, of a fair judicial trial according to recognized procedure upon the facts on which his right to remain depends. The opinion states: "While it is true, now that the supreme court has so decided, that the political power of the government may say whether a citizen of the country who has gone away shall be allowed to return or not, it seems to us incontrovertible that a citizen of the country who has not gone out, may not be deported or banished until the right of the government to deport or banish has been judicially determined." Moy Suey v. United States, 33 Nat. Corp Rep. 40 (April, 1906). This limit is one which the supreme court may consistently follow; for the judicial determination of the question of citizenship of Chinamen already resident here will have none of the serious consequences that would attend the vesting of similar rights in Chinamen seeking admittance.

It may be that many of the decisions here reviewed were not contemplated as possible by the framers of the Constitution, who placed the protection of private rights in the arm of the judiciary. But there was as little anticipation of the external conditions on which those decisions are based. They chose to leave the definition of "due process of law" to the judiciary, and if we find that in

[2]Since temporary confinement is a less serious interference with private right than permanent exclusion, the case shows clearly that the determining factor in sustaining the exercise of these administration functions is not the extent of the restraint of personal liberty, but the relation of the means employed to the necessities of government.

reaching that definition, the well-being of the people as a whole is regarded as worthy of as much consideration as the well-being of a single individual, we are not for that reason to assert that we are departing from the spirit of the Fathers and vesting in the government absolute and arbitrary powers characteristic of despotism rather than democracy.

NOTES ON CURRENT LEGISLATION

MARGARET A. SCHAFFNER

Insurance. If we consider the objects of insurance legislation in the past we find that they may be grouped roughly under three general heads, namely: (1) publicity, (2) solvency of companies, (3) equity among individual members.

Legislation looking toward publicity began with the Massachusetts law of 1807 which required insurance companies to make a report on their business to the general court. This law was amended in 1818, in 1827, and at various times thereafter, and other States followed the example set by Massachusetts until 1858 when Massachusetts again took the lead by establishing a *standard of solvency*. This was the direct result of the discovery that a large number of companies had continued to transact business and to take upon themselves additional obligations when they were hopelessly insolvent. This law gave the insurance commissioner a *standard* or "yard stick" by which it could be determined whether or not a company was in a position to meet its obligations. Similar laws were passed in other States and are now in force in practically every State in the Union.

The third step in constructive legislation came in 1861 when Massachusetts again took the lead by enacting the first *nonforfeiture law*. This law had in view the equities of the policy-holders. The cruel practice theretofore prevailing, of compelling a policy holder to forfeit the entire value of his policy in case of lapse was now prohibited by law. Some of the New York companies had already issued policies containing surrender value provisions but the practice was by no means universal and it was argued that such innovations would be dangerous to the companies on account of adverse selection. This legislation has also been adopted in many other States in the Union. But since that time there has been very little, if any, constructive insurance legislation until the legislature of New York in

1906 enacted laws to cut down or *limit the expenses* of life insurance companies.

The cause of the present agitation has no doubt been the extravagance into which the companies have fallen as a result of their mad rush for new business. The testimony of all the investigating committees and commissions has been practically unanimous to the effect that there has been too much money used for expenses. The specific charge has been made that premiums are too high and that the companies have piled up millions upon millions of unnecessary surplus which is not needed for the safety and perpetuation of the companies and that it has led to extravagance on account of failure to properly distribute back these overcharges in the form of dividends.

The main thing sought therefore, in the present agitation is *economy* in matters of expense, and this marks the fourth great step in constructive insurance legislation.

Summary of Present Laws. An examination of the statutes of the various States of the Union reveals such a variety of enactments that classification becomes almost hopeless. A very brief summary of the laws in force must suffice.

With respect to domestic stock companies thirty-three States have special incorporation laws. Thirty-one States require capital stock as a guarantee of safety and good faith; the amount varying from $100,000 in twenty-three States, $200,000 in three States, $300,000 in one State, $50,000 in three States and from $50,000 to $1,000,000 in one State. The amount required to be paid up in cash before the company is allowed to commence business varies from 25 per cent to 100 per cent of the amount subscribed. Most States make the same requirement of foreign companies as a condition to entering and commencing business except that in some of them a larger proportion of the stock is required to be paid up in cash.

In fifteen States mutual companies are required to have a guaranty capital varying from $100,000 to $200,000 and seventeen States require such companies to accumulate assets of from $100,000 to $300,000 before their contracts become valid for the full amount of insurance. Five States require a capital stock of domestic companies but do not require such capital from foreign companies for entering. It would seem that foreign companies should be held to fully as high a standard as domestic companies but this may be merely an accidental omission in the law.

The amount of insurance required to be subscribed in a new company before the policies take effect varies from $100,000 to $500,000 and the number of applications required varies from 100 to 500.

Forty-five States require the filing of a copy of the charter, and thirty States require the companies to file a copy of their by-laws. Thirty-eight States require the filing of a preliminary statement. Twenty-three require the filing of certificates of deposit. Twenty-five require filing with the commissioner all policy forms and one State (Wisconsin) adds "all advertising literature." In five States the law requires the filing of a list of agents and the companies are probably required to do so by the commissioners in all other States although not specifically required by law. Forty States require the companies to obtain a "permit to do business."

With respect to annual meetings, six States require notice by mail, or publication from two to three weeks before the meeting is held. Three States provide for notice on the policy. With respect to special meetings, thirteen States require notice by mail and seven of these require the purpose of such special meeting to be stated in the notice. Eleven States have laws relating to the voting at the meetings of stockholders and policy holders and three of these specify the number of votes to be cast for each $1000 of insurance. Two States forbid officers to cast votes by proxies and four States specify the number allowed to be cast by one person, the number varying from fifteen to fifty. Seven States specify the duration of proxies, the limit varying from one meeting to one year. Twenty-three States regulate in some way or other the number of directors. The highest number in any State is fifty-four. Nine States specify the number requisite for a quorum. Five States provide for "approved forms of policies." That is, they must issue policies that are subject to approval by the insurance commissioner. Twenty-one States provide for special features such as attaching a copy of application to policy, surrender values, suicide clause, etc. Eleven States regulate the size of type to be used in printing the policy. Four States require a copy of application to be attached to policy and three States require a copy of application to be furnished upon demand. Twenty States require a statement of organization, thirty-five States require the filing of a statement as a condition precedent to entry and forty-six require an annual statement. One State requires a semi-annual statement. Seventeen require a special statement and twenty-one require a tax statement.

Strange as it may seem no State requires a statement to be filed by companies that have ceased doing *new* business in the State although they may have a large amount of insurance in force in the State. Twenty-one States require periodic examinations by the commissioner, the period varying from one to five years. Forty-four States give the commissioner power to examine at his discretion. Nine States provide for an examination at the request of the companies and twenty-one provide for an examination at the request of others. Fifteen States provide for periodic valuation of policies, the period varying from one to three years. Twenty-four States require the use of the combined experience table of mortality; twenty-eight require the American. Eighteen States allow the use of either or both and thirteen States are silent on this point. Thirty-five States fix the rate of interest, the rate varying from 3 per cent to 4 per cent. One State limits the amount of risk that can be taken on a single life to $1000 until 1000 policyholders have subscribed for insurance amounting to $1,000,000. Five States limit the amount taken on a single risk to 10 per cent of the capital stock and one State, Massachusetts, forbids taking a single risk amounting to more than 10 per cent of the net assets. Thirty-one States forbid discrimination in rates and six States specify that no distinction shall be made on account of color. Twenty States specify an age limit, twelve require medical examination and three States require companies to give a certificate to a colored applicant, if rejected, showing that he was rejected on account of ill health and not on account of color. Nineteen States specify what part of a risk may be reinsured and in nine of these it is limited to 50 per cent of the risk. Seven States allow the whole risk to be reinsured, twenty-four allow the reinsurance of all risks, a two-thirds vote being required in most cases.

Investments have been subject to a large amount of legislation. Thirty-six States mention government and State bonds, thirty-two mention municipal bonds, thirty-five mention real estate mortgages and twenty-eight of these limit the amount that can be loaned to 50 per cent of the value. One State allows loans up to 60 per cent of the value and one State allows only 35 per cent of the value. Eleven States allow corporate bonds, five allow investment in stocks, three allow notes, six mention national bank securities, twelve allow policy loans, four of which allow the full reserve, one 95 per cent of the reserve and one 95 per cent of the cash value

stated in the policy. Twelve States mention "approved bonds," sixteen allow "approved securities" and give the commissioner power to pass upon their value. Twenty-seven States provide for the permanent holding of real estate and twenty-six of these specify that it must be for the companies' own use. In one State it is limited to $300,000 and in one State it is limited to 25 per cent of the assets. These same States also provide for the acquisition of real estate in satisfaction of debts. Eighteen of the States require that it must be disposed of within a specified time, the limit varying from two to ten years. In two States provision is made for improvement of real estate so acquired. Four States specify what per cent of the capital stock may be invested in one loan the amount being in all cases 10 per cent. Three States allow 5 per cent of the assets to be invested in national bank stock, and forbid the investment of more than 25 per cent of the assets in real estate. Thirty-one States provide a time limit within which the companies must settle all valid claims, the time varying from twenty to sixty days. Nine States provide that contested claims shall constitute a breach of contract, twelve States provide that material misrepresentation shall be ground of contest if intentional, seven if not material, though intentional; eight States make it ground for contest if material though unintentional. Fourteen States require surrender values to be given in case of lapse and of these, twelve require such values after three years, one after two years and one does not specify any time. As to the form of such surrender values twelve States provide for paid-up insurance, seven for extended insurance and four provide for cash. Six States make the surrender values automatic. Ten States provide for dividends on capital stock six limiting it to 8 per cent, one to 10 per cent and two States to 12 per cent, the remainder being silent as to the rate allowed.

"Service of process" has also received considerable attention. Thirty-six States make the commissioner of insurance the agent for services of process, twenty-four provide for some particular agent and of these all but seven allow service to be made on the commissioner. Eight States make service on "any agent" valid. Twenty-nine States make the duration of such attorneyship valid as long as there are liabilities in the State on account of contracts issued therein, and eighteen are silent as to duration.

The above summary covers practically all the positive or sub-

stantive laws at present in force on the subject except the provisions relating to penalties. The penalties are also of a considerable variety though revocation of license to do business is the most common. In late years, however, there has been a tendency to make violation of these laws a misdemeanor punishable by fine or imprisonment or both.

Faults of Present Laws. To return to the question of the shortcomings of these laws; it has been shown that the laws affecting publicity are inadequate, first because they have failed to disclose a great many importnt transactions of the companies, and second, because the policyholder is left largely in the dark as to the real nature of his contract, and, third, because they have failed to disclose the factors used in computing dividends.

The laws establishing a standard of solvency have been too rigid in that they have failed to recognize the proper relation between the first year's expense and the total expense provision of the policy. The standard of solvency adopted by Massachusetts in 1858, and practically copied in all the other States, requires a uniform expense provision for each year of the policy. This allows too little the first year when the company has to pay the agent's commission, medical examination and other incidental expenses incurred in issuing the policy, while it allows more than is necessary in the later years when the policy has become, so to speak, self-sustaining. This rigidity of the law has led to its direct violation in the form of special contract provisions, known as *preliminary term* contracts, in which it is "agreed" between the company and the policyholder that the entire premium of the first year shall be treated as a "term premium." The objection to this practice is that it results in levying a disproportionate amount of the expenses of the company upon endowment and limited payment of life policies. Preliminary term as first used, however—and still used by some companies—is not open to this objection. It originally meant the issuing of a policy at "short term rates" so as to make the premiums upon the regular policy fall due at some particular time of the year which might suit the convenience of the policyholder. In late years this true and original meaning of the term has been superseded by the other. There has been considerable discussion upon the question as to whether or not preliminary term contracts—using that expression in its later meaning—are legal in the absence of specific statuatory enactment, but the supreme court of

Vermont has decided this question affirmatively. When Dr. Fricke was commissioner of insurance of Wisconsin he accepted the valuations of some companies reported on that basis and a number of other commissioners did likewise. It has thus received the sanction of State authority for a considerable number of years and this, it is claimed, has given it the force of law in the absence of specific statutary provisions to the contrary.

Remedies Proposed by Actuaries. The solutions offered are in the nature of a compromise. Many authorities concede that the expense of securing new business can never be forced back into the narrow limits allowed by the level loading of the full regular reserve plan. It is likewise conceded that the unrestricted use of preliminary term contracts is unjust especially to holders of high priced contracts like endowments and limited payment life policies. The compromise methods offered are "modified preliminary term" and "select and ultimate."

The modified preliminary term allows as an expense provision on all endowments and other high priced contracts the first policy year, an amount equal to the premium on an ordinary life policy (less current cost) issued at the same age. Lately there has been offered a variety of minor modifications of this plan.

The select and ultimate method allows the company, as an expense allowance in addition to the level loading, an amount equal to the present value of the probable savings on mortality during the first five years of the policy, the assumption being that the company will use for actual mortality cost a percentage of the regular or tabular cost as follows:

First policy year	50 per cent.
Second policy year	65 per cent.
Third policy year	75 per cent.
Fourth policy year	85 per cent.
Fifth policy year	95 per cent.

and 100 per cent each year thereafter, the reserves being computed accordingly. This is merely the legalization of the use of mortality gains, according to the above schedule, for expenses. The full regular reserve plan contemplates that such gains shall be returned to the policy holders in the form of dividends.

As stated above the first non-forfeiture law was passed by Massachusetts in 1861. Most of the acts passed since that time have been amendments or supplements to this law. But the laws of most of the States are still weak and need to be amended and strengthened. This can be done, first, by extending surrender values to the first year of the policy; second, by abolishing deferred dividends; third, by providing for a more equitable system of loading for expenses and contingencies, and fourth, by enforcing equitable accounting in the matter of dividends. That is, the gains of one class should not be used in any way to benefit other classes of policyholders to the detriment of those to whom they properly belong. Fifth, by prohibiting the use of harsh and arbitrary provisions either in the policy, in the application, in matter of policy loans, assignments, etc., which would result in gains to some policyholders at the expense or forfeiture of others.

The one great need at present, however, is to curb expenses. The expenses of life insurance companies have grown out of all proportion to what they were fifty years ago, and this is due to this one fact, more than anything else, that the companies have grown too large and unwieldy to make it practical for the policyholders to exercise any effective control over the management. Boards of trustees have become self-perpetuating and these in turn have become subservient to a coterie of officers who form a sort of clique which manages the elections by a system of voting by proxy. Voting by mail seems to be the only method by which the policyholders can regain and exercise an active voice in the management and bring pressure to bear upon the officers if they are unfaithful to their trust. If they are faithful and efficient in the discharge of their duties they would, no doubt, be as frequently reëlected under that system as under any other system.

Proposed Laws. In the agitation in the press it seems that undue attention has been given to the question of annual versus deferred dividends The deferred dividend system has been held up as the the "root, source and cause" of all the ills that have prevailed in the business. A little reflection together with a critical examination of statistics will show, however, that this is not quite true. It is not intended to enter here upon a statistical analysis of the life insurance business, nor to argue at length the merits and demerits of all the laws proposed in the different States, nor even to mention every bill

that has been introduced into the State legislatures, as a result of the recommendation of the various investigating committees. An article of this kind, however, would fail in its purpose if it did not point out what seems to the writer to be the most flagrant evils as well as the roots of those evils in connection with a discussion of proposed legislation.

Practically all the investigation committees have recommended that deferred dividends be abolished, and it is not the intention here to defend deferred dividends, but when our statistics prove conclusively that companies that have never issued deferred dividend contracts show salaries and other expenses quite equal to those of dividend companies, we must conclude that the real cause of extravagance lies deeper than the mere question of annual versus deferred dividends. And again, when it is found that the factors used in computing the annual dividends are so grossly at variance with the actual earnings of the companies that the contribution formula becomes a farce and a figure-head it is difficult to see how the mere requirement that dividends shall be distributed *annually* can cure all the evils in the life insurance business. Nevertheless, deferred dividends have received the most of the criticism, and every committee except one has recommended that they be abolished. I agree that they should be abolished and that dividends should be computed and distributed annually, but it seems self-evident that annual accounting will be useless, unless it is supplemented by a requirement that the *factors* be substantially in accord with the actual earnings of the companies.

The matter of control in the election of officers and directors is undoubtedly the most important question at issue, and until the policyholders are given some method or machinery by which the management can be made to feel that they are directly responsible to the policyholders and that they will be held strictly to account to them there can be no lasting reform. With an effective system of electing directors the question of expense would very largely take care of itself. Most of the committees have recognized this fact, but they have scarcely given it the prominence that it deserves.

The New York committee recognized the evils growing out of deferred dividends but failed to make any provision for even a provisional accounting of present deferred dividend funds on hand. The Wisconsin committee has recommended that a provisional account-

ing be made to each policyholder and that the amount so credited be treated as a liability to the deferred dividend policyholders as a class.

The New York committee also recognized the evils of voting by proxy but allowed the system to remain with certain restrictions. The Wisconsin committee recommended that proxies be abolished entirely.

The Wisconsin committee recommended twenty-four bills as follows.

1. A bill to define certain terms used in the statutes.

2. A bill to regulate the election of directors, abolishing the voting by proxy and providing for a system of voting by mail instead. This bill also provides for cumulative voting so that policyholders can "mass" their votes for any candidate whom they may desire particularly to have elected. The bill also gives each policyholder one vote regardless of the amount of insurance carried by him.

3. A bill to authorize the governor to appoint one director or trustee for each domestic mutual life insurance company.

4. A bill to require life insurance companies to make a deposit of approved securities with the State treasurer equal to the full legal reserve of the policies in case of withdrawal from the State.

5. A bill to prohibit the writing of both participating and non-participating business by the same company.

6. A bill to require stock life companies to determine and report the amount of surplus apportionable, respectively, to stockholders and policyholders.

7. A bill to amend the valuation laws so as to permit the use of other standards than net level premium valuation.

8. A bill to provide for standard provisions to be contained in life insurance policies. This bill provides among other things that there shall be a table in the policy showing the amount assumed to be necessary, as a loading for expenses and contingencies; (2) for mortality, and (3) the amount to be set aside each year as a reserve. This bill has met with the most strenuous opposition from the companies on the following grounds: first, that it would involve a considerable expense to the companies; second, that it would be misleading on account of the impossibility of determining beforehand what the actual charges would be, and third, that the policyholders do not care for the information.

9. A bill to limit the premium which may be charged by life insurance companies.

10. A bill to limit the expenses of life insurance companies.

11. A bill to limit the amount of compensation to be paid to officers and agents in the absence of specific authorization by the policyholders.

12. A bill to amend the anti-discrimination laws, so as to prohibit the sale or insurance of so called board contracts or stock or other securities in connection with the sale of insurance policies.

13. A bill to prohibit misrepresentation by life insurance companies and their agents.

14. A bill to provide for the ascertainment and apportionment of deferred dividends and requiring reports to show the method of computing them.

15. A bill to provide for the annual apportionment and distribution of surplus and requiring reports similar to those provided for in bill No. 14.

16. A bill to repeal the so called stipulated premium law.

17. A bill to require life insurance companies to furnish a copy of the application for a policy.

18. A bill to require life insurance companies to report all moneys paid and other disbursements made in opposing or promoting legislation.

19. A bill to repeal the retaliatory laws of the State.

20. A bill to require life insurance companies to report all contributions made for political purposes.

21. A bill to limit the amount of insurance to be written on any single risk.

22. A bill to amend the law relating to licenses.

23. A bill relating to the discontinuance of business by life insurance companies.

24. A bill to require life insurance companies to furnish a gain and loss exhibit in connection with their annual statement.

It was believed that these bills would provide a remedy for practically everything that has been complained of in life insurance, and it is only just to say that the Wisconsin committee has gone deeper into the question of insurance, from an economic and social point of view, than any other committee and their recommendations should be heeded by those who are endeavoring to institute reforms in the life insurance business.

Mention is due, however, to certain measures that have been passed in some of the other States, notably in the south and west. There is some objection raised to sending the premiums to the east to be invested in low interest bearing securities, when better rates of interest can be secured in the west on good security. This has led to the enactment of laws to compel insurance companies to invest, in some States a certain per cent of their premiums, and in others a certain per cent of the reserve within the State.

The question of State insurance has been brought prominently to the front in a number of States, principally Florida and Wisconsin. Hon. N. B. Broward, governor of Florida has twice recommended it in his message but it has failed to meet with legislative approval. In 1905 the upper house of the legislature of Wisconsin adopted a resolution providing for the appointment of a committee to investigate the subject of State insurance. A committee was accordingly appointed which made an examination into all the State and governmental systems of insurance then known and reported two to one against recommending State insurance. This committee of the senate also became a part of the joint investigation committee of the two houses which was appointed in accordance with the resolution and law passed at the special session held in the fall of the same year. At least one of the two senators who reported against State insurance, however, has expressed himself as being in favor of State insurance in case the reform measures recommended by the joint committee fail to pass.

Another somewhat radical proposition is that of compulsory industrial insurance recommended by a commission appointed by the State of Illinois and sent abroad to study the question of insurance for laboring classes. The commission reported in favor of such compulsory insurance, but its recommendations have failed to meet with the approval of the legislature.

LEWIS A. ANDERSON.

Lobbying. Among the States of the west and northwest, which have passed laws this year regulating legislative lobbying, are Missouri Nebraska, Idaho and South Dakota.

The law of South Dakota ('07, c. 182) is fairly typical of present day legislation on the subject of lobbying. It provides that every person or corporation employing any person to act as counsel or

agent to promote or oppose any legislation affecting the pecuniary interests of any individual, association or corporation, shall cause the name of the person so employed to be entered upon a legislative docket and the person so employed shall cause his name also to be entered upon such docket.

The secretary of state is required to keep two dockets, one containing the names of legislative counsel before committees, and the other of legislative agents, both open to the public. The entries are so made that they show all the subjects of legislation in relation to which any counsel or agent is employed, and no person is permitted to appear as counsel or act as agent in respect to any legislation, unless his name appear upon the docket of legislative counsel or agents. No legislative counsel or agent whose compensation is dependent in any way upon the passage or defeat of proposed legislation may be employed. Lobbyists may attempt to influence legislation by appearing before the regular committees, by newspaper publications, and by arguments and briefs delivered to each member of the legislature.

The legislative counsel and agents are required to file with the secretary of state a written authorization to act as such, signed by the person or corporation employing them. No legal agent or counsel is permitted to go upon the floor of either house, except by invitation.

Within thirty days after the final adjournment of the legislature, every person, corporation or association whose name appears upon the legislative dockets of the session is required to file with the secretary of state a sworn statement of all expenses paid or incurred in connection with the employment of legislative counsel or agents.

A fine of not less than $200 nor more than $500 for any violation of the act is provided; and any person employed as legislative counsel or agent, who fails to comply with the act, is liable to a fine of not less than $100 nor more than $1000, and to be debarred from acting in the capacity of a legislative counsel or agent for the period of three years from the date of conviction.

An emergency was declared to exist and the law went into effect February 7.

The Nebraska law, as well as that of Idaho, provides imprisonment in the penitentiary or county jail as well as fines for violation of the law. In Missouri the emergency clause was dropped; but in Idaho, one was inserted, so the law went into effect in January.

E. Watson Kenyon.

Commission System of Municipal Government—Des Moines Plan. The Des Moines plan of city government is only another name for the commission system, a system in which the mayor and aldermen are done away with and a mayor and councilmen are substituted in their places. The unit for government purposes is not the ward but the city as a whole, the theory of separation of power is greatly modified, and the mayor has no veto. It is a system in which power and responsibility are conferred on a few elected men and they in turn may appoint other officers and heads of departments who will work in harmony with the administration. An irresponsible, unbusinesslike organization is replaced by a responsible, businesslike management and an attempt is made to rid the city of bosses and grafters and put the affairs of the city in the hands of business men. In short, the city is looked upon as a great enterprise that must be managed for the good of the citizens and not as a source of revenue for grafters and a playground for politicians.

The idea is not entirely new, the city of Washington, D. C., has been governed by such a system since 1874. But Washington was under peculiar circumstances and it was not until the city of Galveston, Texas, took up the plan in 1901 that it began to attract attention. Houston followed in 1905 and within the last year the agitation has become general and widespread. The States where the system is receiving the greatest attention are Iowa, Kansas, South Dakota, Tennessee, Washington and Wisconsin. Discussion and agitation has resulted in laws in some of these States while in others the matter is still under consideration.

The act recently passed in Iowa providing for the Des Moines plan is a good one and is apt to serve as a model for future legislation. It is based on the Texas plan but has this advantage—it is a general law and may be adopted by any city in the State of a required size. In order to get a clear statement and a proper understanding of the law it will be necessary to outline the plan and discuss it in some detail. All of the important provisions of the plan may be arranged under the following headings: steps necessary for the introduction of the system, the plan of government, franchises, civil service, publicity, recall, initiative, referendum and steps necessary to return to the former plan of government if the commission system proves a failure. Thus the law completes an entire cycle by introducing a new form of government, providing for its workings and abolishing it for the former plan if it proves unsatisfactory.

The new form can be introduced only in cities having a population of 25,000 or more and even then it is optional and may be put to a vote only when electors equal in number to 25 per cent of the votes cast for all candidates for mayor at the last preceding city election petition to that effect. After the petition has the required number of signers, a majority of votes cast at a special election is all that is required to change the form of government. The law should be general and optional and if anything it should be even more general. There is no real reason why the system if good should not be extended to cities of less than 25,000 inhabitants if the voters desire it. No such distinction is made today in city government and if the plan will give satisfaction in a large city it should be equally successful in a small one. Bad city government is not confined to large cities at the present time. Another criticism might be offered on the number of votes required for its introduction. If the majority vote were increased to a three-fifths vote there would be a real desire for the plan before it was adopted and a three-fifths majority is not so great but what a reform element interested in good city government could carry an election.

When a city has decided to introduce this new form of government a mayor and councilmen are nominated and elected at large. They hold office for two years and vacancies are filled by appointments by the remaining members. Candidates for office are nominated at a non-partisan primary. When the results of the primary election are known the two candidates receiving the highest number of votes for mayor are the only candidates whose names are placed on the ballot for that office at the next general municipal election and the eight candidates receiving the highest number of votes for councilmen are placed upon the ballot for councilmen at the same election. Bribery and corrupt practices are entirely forbidden and severe penalties imposed. The plans set forth and the practices provided for are all up to date and important. The non-partisan primary and the forbidding of bribery and corrupt practices at elections need no comment. The thing of most interest is that the old idea that the ward must be the unit for city government is entirely done away with and the city is recognized as the real unit. Each voter expresses his choice for all candidates and the councilmen thus compelled to depend upon votes from all parts of the city look upon the city as a whole and consider its needs as a whole rather than the need of some particular ward.

Cities adopting this plan are governed by a mayor and four councilmen. Three members constitute a quorum and the affirmative vote of three are necessary to pass any ordinance or other measure. The mayor presides at all meetings of the council, has a right to vote but has no veto power. The new council exercises all executive, legislative and judicial powers and duties formerly exercised by the mayor, city council, city officials and the various boards and departments. Here we have an abandonment of the theory of the separation of powers so familiar to every student of American politics and the substitution of a business principle in its place. The council is more like the managers or directors of a large concern working for a common end than a body of suspected and suspicious men jealous of the powers of another branch of the government. The mayor is by virtue of his office superintendent of the department of public affairs, and the council at the first regular meeting after its election designates by a majority vote one councilman to be superintendent of each of the following departments: accounts and finances, public safety, streets and public improvements, parks and public property. This designation need not be permanent but may be changed whenever it appears that the public service will be benefited. The council also elects the other city officers by majority vote at the same meeting or as soon thereafter as practicable and has discretionary power in the matter of creating and discontinuing offices and employments and also in the matter of compensation which is to be paid officers and employees. In these provisions the legislature has recognized the fact that good city government may best be obtained by giving a few men power and by making them responsible to the people for every thing that happens within the department under their management. They have also recognized the principle that if city officials are to render the best possible service they must be aided and surrounded by men in harmony with themselves and not by men of entirely different beliefs. This is well provided for in the Des Moines plan. The councilmen are few in number, each one is the head of a department and together they appoint the important officers necessary to run the machinery of government. The responsibility is definite and fixed and if the officers do not do their duty they may be dismissed and if the councilmen are incompetent or negligent they may be recalled by the people upon petition and vote. The minor officers and employees are provided for under the

civil service rule. The mayor and councilmen receive salaries according to the population of the city. Mayors receive $2500 to $3500 and councilmen from $1800 to $3000. The salaries are large enough to induce men of ability to undertake the duties and responsibility of the office and devote their entire time to it. The mayor is president of the council and presides at all the meetings while the superintendent of the department of accounts and finances is vice-president and in case of the absence or inability of the mayor performs the duties of his office. This in brief is the machinery of city government as set forth in the Des Moines plan.

Numerous provisions are put in the law relating to the granting of franchises and the relations of city officials to corporations. For example, every ordinance, resolution, contract or franchise must remain on file with the city clerk at least one week before its final passage or adoption. All franchises or grants for public utilities must be authorized and approved by a majority of the electors voting thereon at a general or special election. No officer or employee elected or appointed is to be interested, either directly or indirectly, in any contract to which the city is a party or in which any public service corporation is interested. Neither is any officer allowed to accept a free service from any public utility. The object of these provisions is very evident. The people are well aware of the secrecy that has surrounded the granting of franchises and privileges in the past and they are also aware of the enormous amounts of money and benefits that have been lost to the city when corrupt councils have had power to grant franchises at will. These provisions are intended to give the people an opportunity to know what ordinances and franchises are desired by public service corporations and to give the people a chance to refuse to make the grant unless sufficient consideration is given in return.

A civil service commission of three men is also provided for and its duties and powers defined. By this method personal merit and ability is substituted for political pull, and the best possible service for the city assured. Civil service rules do not apply to all city officials. The offices of city clerk, solicitor, assessor, treasurer, auditor, civil engineer, city physician, marshal, chief of fire department, market master, street commissioners, library commissioners and such other officers as shall be provided for by ordinance are filled by direct appointment and without examination. The mayor's secretary and

assistant solicitor, election officers and laborers with no special skill or fitness may be appointed from names not on the civil service list. Ample provision is made for the suspension and discharge of incompetent or negligent officers or employees. The mistake was not made of including all officers under the rule of the civil service commission nor of exempting all from it. A midway line has been drawn and the officers that come directly under the supervision of the heads of the department left free from all civil service rules. A detailed itemized monthly statement of all receipts and expenses of the city is to be printed in pamphlet form and copies furnished the libraries and newspapers. Copies are also to be furnished to any individual applying for them. Provision is also made for an annual examination of the books by competent accountants and for a publication of the results.

The right of recall is established and the ways and means provided by which a dishonest or incompetent mayor or councilman may be removed from office by a vote of the people. If electors equal in number to at least 25 per cent of the entire vote cast for all candidates for the office of mayor petition demanding an election of a successor of the person sought to be removed, then the council must call a new election. Any person sought to be removed may be a candidate to succeed himself and unless he request otherwise in writing the clerk shall place his name on the official ballot without nomination. At first thought it would seem that this is a dangerous proceeding and that the followers of a defeated candidate will be continually petitioning for a new election but when we consider the fact that elections will probaly become more nonpartisan under such a system and that a defeated candidate will seldom if ever have enough power over his followers to pursue any such policy, the danger is seen to be apparent, not real. This will leave the working of the recall to cases where the mayor or councilman is really dishonest or incompetent, and will have a tendency to make the holders of offices more careful of their conduct and actions.

If the council refuses to pass needed ordinances the people may take the initiative and compel the consideration and passage of desired measures. The petition for the passage of an ordinance must be signed by 25 per cent of the voters as shown by the last city election. When the petition is signed by the required number the council must either pass the ordinance within twenty days or put the question to

a vote within ninety days. If more than 10 per cent of the electors petition for an ordinance it must either be passed or submitted to a vote of the people at the next general city election. If any ordinance passed by the council is not satisfactory to the voters they may petition for a vote on the question and reject it by a majority vote.

In all probability the recall, the initiative, and the referendum will seldom be used, nevertheless they will do much good indirectly. The recall will compel officers who might otherwise be inclined to be dishonest or negligent to be more honest and more careful of their duties. Indirectly the referendum will prevent bad or harmful legislation and the initiative will aid and instigate good legislation. The council will be jealous of its rights and duties and will not be at all anxious to have the people initiate any legislation or refuse to accept ordinances passed by them as councilmen.

Any city which has operated for more than six years under the provisions of this act may abandon the system, and accept the provisions of the general law of the State then applicable to cities of its population. Upon the petition of not less than 25 per cent of the electors of such city a special election is to be called and if a majority of the votes cast at such election are in favor of the proposition the officers elected at the next succeeding biennial election are to be those then prescribed by the general law of the State for cities of like population, and upon the qualification of such officers the city shall become a city under the general law of the State.

ROBERT ARGYLL CAMPBELL.

Public Utilities—Control. The legislative year of 1907 will be noted for two remarkable pieces of legislation, having for their object the control of public service corporations. New York and Wisconsin have enacted comprehensive measures designed to curb the power of public service corporations and bring them into working harmony with the people whom they were organized to serve. The former was adopted after a memorable personal fight on the part of Governor Hughes; the latter was adopted in fulfillment of party pledges in the last campaign, without serious opposition.

The principle upon which these laws are based, is that public service corporations are neither public nor private, but quasi-public. They have received valuable rights and privileges from the public and are dependent upon the public for their profits; consequently,

they owe corresponding duties, and if they fail or refuse to perform those duties properly, it is the right and duty of the people, acting through their governmental agents to regulate them so that the public may have justice in rates and service. A railroad company or other corporation which is given the right of eminient domain, or a gas or water company which has received valuable franchises in the use of streets and public places, owes just rates and adequate service in return for these rights and privileges.

The public has come to a recognition of the fact that these corporations are not private, with all the immunities of private property, but that they are public servants, and subject to regulative control. The equitable working out of that control is the problem for the legislators. It is that problem which the new public utility laws of New York and Wisconsin seek to solve.

The regulation of one form of public utility, the railroad, has been before the public in one form or another for many years. Control more or less effective, has been secured in nearly all the States of the Union and in interstate commerce. But the regulation of the more strictly municipal utilities has been left to the local units. This has resulted in a chaos of regulation and in conditions which have made the municipality a by-word for corruption, both at home and abroad. Little substantial benefit has been received by the people from such regulation. Frequent attempts have been made to regulate this or that utility by direct legislative enactment, but such attempts have largely failed as equitable solutions because the legislatures have not had at hand the data necessary for complete investigation. The inadequacy of direct legislative regulation has brought about the system of regulation by commission which is exemplified in the railroad commissions of the various States, the interstate commerce commission and the commissions in New York and Massachusetts for the control of gas and electric companies. The two laws under consideration make this system of control operative over all public service corporations.

Control of Public Utilities in New York and Wisconsin. It is necessary to an understanding of the scope and importance of these measures, to examine briefly the history of the control of public utilities in the two States. Following the granger agitation and the beginning of the movement for the control of interstate commerce, the State of New York created a commission in 1882, with power to

exercise general supervision and control over railroads. Various amendments have been made to this law and the commission has been given quite extended powers, among which may be mentioned the power to investigate rates and services; require reports; pass upon the public convenience or necessity of new construction; investigate accidents and pass upon the issue of stocks and bonds of railroad companies. Two additional members were added in 1905, but the commission was never given adequate powers to enforce in the courts its conclusions as to rates and services and hence its determinations amounted only to recommendations. It was paid by a special tax upon the railroads, and became subject to bad political influences.

In 1891 the rapid transit act was passed, which created a rapid transit commission in cities of over 1,000,000 inhabitants and conferred upon it powers of control over the transit systems of such cities. This legislation came as a result of the complicated transit problems of New York City and, by its terms, applied only to that city. The commission has been given wide powers from time to time and on the whole has done effective work, but, as stated by Governor Hughes in his message to the legislature, "Through the accretions of years it has become cumbersome and extremely complicated." It conflicted with the railroad commission of the State in its powers over certain phases of transportation in New York City, thus resulting in a dual control.

New York has also tried the regulation of gas and electric companies through the medium of a commission. In 1905 a commission of gas and electricity was created with broad powers of control of such companies. The short term during which it has exercised those powers has not been sufficient to determine its efficiency.

On the whole the results of the control of public service corporations in New York have not been very satisfactory. Confusion of laws; duplication of control; inadequacy of powers in the commission; ineffective administration and improper influences have resulted in making that control of little value. Recognizing these facts, Governor Hughes in his message of January 2, 1907, recommended the abolition of all these boards and the creation of two new boards; one for the city of New York and one for the rest of the State, with adequate and definite powers of regulation and enforcement. The bill embodying these recommendations was passed by the legislature

in May, 1907, after the remarkable and effective appeal of the governor to the people.

Wisconsin was one of the first States to regulate railroads through a commission. In 1874 a law was enacted creating a railroad commission with wide powers of supervision and control.

The crudeness of the measure and of its enforcement enabled the railroads to secure its repeal two years later. Repeated attempts were made to reënact the law but they were not successful until 1905, and then, only after a campaign upon that issue, which was memorable for the interest aroused throughout the State and country. The law is clear and comprehensive, and under the efficient administration of the railroad commission, it is very effective and has materially changed the relation of the railroads to the people of Wisconsin. The success of this measure stimulated the agitation for the regulation of all public service utilities in the State in the same manner. In the last campaign both political parties declared for strict regulation of such utilities, and in his annual message of January 9, 1907, Governor Davidson strongly recommended legislation which would effectually curb the power of public service corporations, remove their baneful influence from municipal politics, and bring them under State regulation. The measure to accomplish these purposes was carefully and scientifically worked out and after full and free discussion was enacted by the legislature in June, 1907.

Provision of the Laws—Organization. The New York law abolishes the railroad, gas and rapid transit commissions and provides for two public service commissions: one for the counties of New York, Kings, Queens and Richmond (Greater New York), which is called the first district, and one for the rest of the State or the second district. Each commission is to be composed of five members, appointed by the governor with the consent of the senate, for a term of five years at a salary of $15,000. The governor has the power of removal for inefficiency, neglect of duty or misconduct in office, but he must submit his reasons to the member removed; give an opportunity for a hearing; and file a copy of the charges in the office of the secretary of state. Counsel at a salary of $10,000 and a secretary at a salary of $6000 are provided for each commission and the commissions are empowered to employ all necessary experts, assistants, and employees.

The Wisconsin law places public utilities under the regulation

of the railroad commission, composed of three members, appointed by the governor with the consent of the senate, for a term of six years at a salary of $5000. The governor has the power of removal for like causes and in like manner as in New York. It is provided in New York that no commissioner, counsel or secretary or any officer of the commission shall be financially interested in any of the public service corporations controlled. The same provisions exist in the railroad commission law of Wisconsin, but the new law does not extend it to other public utilities. Passes, franks or gratuities to commission or counsel or secretary, by common carriers are prohibited by the New York law, while the Wisconsin law prohibits such gratuities from any of the public utilities regulated by that law to any officer of the State or municipality.

Utilities Controlled. The New York law provides for the regulation of railroad, street railway, express, sleeping car, freight, freight line, car, and pipe line companies and all companies furnishing gas, natural or artificial, and electricity for light, heat or power.

In Wisconsin, in addition to railroad, interurban, suburban, express, sleeping car, freight, freight line and car companies, which have been under the regulation of the commission, there are added all companies, persons or municipalities furnishing or transmitting heat, light, water, power or telephone service for the public.

General Powers. The commissions in both States are given general power of supervision and regulation of all public utilities doing business in the State which are included in the enumeration above, and to do all things necessary and convenient in the exercise of that power, subject to the conditions imposed by law. They are required to keep informed as to the general condition and service of all public utilities under their jurisdiction and have full power of examination to ascertain the same. They have power to compel the attendance and testimony of witnesses, the production of books and papers and to enter upon any property for the purpose of investigation. Witnesses before the commissions shall not be punished for any act, in regard to which they give testimony, but in New York it is provided that this shall in no way be construed as giving immunity to any corporation. After investigation as provided by the law, the commissions may fix a reasonable rate or standard of service, which shall be the maximum rate and minimum standard to be followed in the future.

INVESTIGATIONS—PROCEDURE. The methods of procedure in investigations are different in the two States and also vary with different utilities.

In New York, the commission may proceed upon its own motion to investigate the quality, standard, adequacy and security of any public utility or of any act done or omitted to be done by such utility contrary to law or order of the commission. On complaint by any person or corporation, in writing, against any common carrier, setting forth anything done or omitted to be done by such common carrier, contrary to law, the commission shall transmit the charges to the carrier complained of and if not satisfactorily answered, the commission shall, if it appears that there are reasonable grounds therefor, make such investigation and take such action as it may deem proper. The commission shall make investigation when it deems necessary of any accidents on common carriers. In the case of gas or electric utilities, the commission may fix the quality and standard of gas and the initial voltage of electricity furnished by any person, corporation or municipality and shall upon complaint of the mayor of a city, trustees of a village or the town board of a town, or of a number of customers varying according to population, make investigation and fix such rates, or quality or standard of service of gas or electricity furnished by any person or corporation as it may deem reasonable.

The commission shall conduct a hearing in regard to any proposed change of law relating to common carriers when requested to do so by the governor, legislature, or committees on railroads and shall report its conclusions together with such drafts of bills as it may deem necessary. It may also investigate interstate rates and petition the interstate commerce commission for relief from abuses and discriminations.

In Wisconsin, the commission may, upon its own motion and shall, upon complaint of any mercantile, agricultural or manufacturing society, or any body politic or municipal organization or any twenty-five persons, firms or corporations make investigation of any public utility complained of, either with or without notice, and if it shall be satisfied as to the complaint it shall hold a formal hearing, after ten days' notice to the public utility. If on such hearing it is found that the rate or service is unfair, unreasonable or inadequate, the commission shall fix a rate, service or practice to be followed in

the future. The commission shall ascertain and fix standards of service of public utilities which shall be followed in the future and be the legal standards for the purposes of this act. The commission shall provide for a comprehensive classification of service and each public utility must make its rates conform to that classification.

Uniform Accounting. The New York commission is given power to require a uniform system of accounting by all persons, public service corporations or municipalities under its jurisdiction. This provision is not mandatory but if any system is required by the commission, such system of accounting for common carriers shall conform as nearly as may be to the system required by the interstate commerce commission. For other public utilities it shall be prescribed by the commission.

The uniform accounting provisions of the Wisconsin law are mandatory. Every public utility is required to establish the system of accounting outlined by the law and by the commission. The forms of such accounts are to be prescribed by the commission and the commission shall provide for the examination and audit of all accounts. Every public utility when so desired by the commission is required to carry a proper and adequate depreciation fund, to be determined by the commission for each class of utilities, but which must be sufficient to keep the property in a state of efficiency, corresponding to the progress of the industry. The depreciation fund may be invested and the income again devoted to the fund. In case of municipal purchase, this fund is not to be deemed a part of the property and shall not be included in the price of the property. The commission shall keep informed as to new constructions or extensions and prescribe forms for keeping accounts thereof.

Prohibitions and Duties. In both States, public utilities are required to give adequate service at a just and reasonable price. All accounts, papers or information in their possession must be open to inspection by the commission. Schedules of tariffs and service shall be published and kept in every office for public inspection and furnished to the commission. No change shall be made until properly approved.

The New York law prohibits common carriers from unjust discrimination or preference, false billing, unfair distance tariff, and the issuing of passes except to specified classes, requires switch and side track connections, joint rates, fair distribution of cars and continuous

carriage; and fixes the liability of carriers for damage to property in transit and for damages caused by the violation of the law. Every common carrier is required to report any accident to the commission immediately by telephone or telegraph.

No railroad or street railroad, gas or electric company under the jurisdiction of the commission shall purchase or secure any part of the capital stock of any other corporation doing a similar business without the consent of the proper commission and no stock corporation of any description, other than those mentioned, shall purchase or acquire more than 10 per cent of the capital stock of any railroad, street railroad, gas or electric company except as collateral security, without the consent of the commission. Franchises may not be transferred or issues of stocks or bonds made without consent of the commission.

The Wisconsin railroad commission law provides all these prohibitions and requirements as to transportation by common carriers and extends those which are applicable to other public utilities. Discriminations are prohibited, and compliance with all orders of the commission required. Every public utility, person or corporation having subways, poles, or conduits, shall permit the use of the same by any other public utility for a reasonable compensation when public convenience and necessity require such use and no irreparable injury to the owner nor substantial detriment to the service will result. Compensation may be fixed by the commission upon request. No powers are given to the commission in regard to capitalization or transfers of stock or franchises as is conferred on the New York commission. Contribution to any campaign fund by any public utility is strictly prohibited.

Control Over Municipalities. These laws take away certain rights which municipal authorities have exercised in the past and place them under the supervision of a State commission.

Franchises. In New York it is provided that the construction of any public utility under any law or franchise shall not be begun until approved by the proper commission after a hearing thereon, as to whether such construction is "necessary or convenient for the public service." The Wisconsin law provides that no franchises shall be granted for any public utility engaged in the manufacture or furnishing "of heat, light, water or power" (telephones are exempt in this case since they require no municipal franchise) in any

municipality where there is an existing company acting under an indeterminate permit as provided by this act, without first having secured a declaration of the commission, after a hearing, that "public convenience and necessity require such second public utility." All franchises hereafter granted in Wisconsin must be indeterminate, subject to the right of the municipality to purchase the plant at any time at the price fixed by the commission. Any public utility, now operating under a determinate permit may exchange the same for an indeterminate permit by filing a statement of such purpose with the clerk of the municipality before July 1, 1908.

SUPERVISION. In New York the commission shall require municipalities operating any gas or electric works to make full reports covering the financial condition of the business. The commission also has power to examine and regulate the quality of service furnished by any municipality operating any public utility. Boards in cities of the first and second classes which have jurisdiction in matters relating to gas or electricity, have such power to enforce the State laws as may be prescribed by statute or the commission.

The Wisconsin law regulates utilities operated by municipalities in the same manner as those in private hands. They are included in the term "public utility" and are subject to all orders or regulations of the commission and must perform the same duties as private companies are required to perform by law or the commission. Subject to review by the commission every municipal council is given the power to determine by contract, ordinance or otherwise, the quality or character of any service, to require additions and extensions and designate the location thereof and to prescribe penalties for enforcement.

MUNICIPAL OWNERSHIP. In New York it is provided that no municipality shall acquire any utility for other purposes than to supply its own needs, without first having secured the consent of the commission.

The Wisconsin law makes careful provision for the transfer of utilities to municipalities. It is provided that only indeterminate permits shall be granted in the future and that a municipality may acquire any utility at any time, by paying therefor the price fixed by the commission. Power is also given to purchase, construct or operate any public utility, subject to the provisions of the act. The procedure for acquiring any utility and determining the price by the municipality is prescribed.

VALUATION OF PROPERTY. The Wisconsin law provides for a valuation by the commission of the property of all public utilities. In determining such value, the commission may avail itself of any information in the possession of the State board of assessment. A public hearing shall be held, and upon such hearing the commission shall fix the value and file a statement thereof with the utility and with the clerk of the municipality where it is situated. A re-valuation may be made at any time on the initiative of the commission. No provision is made for valuing the property of public utilities as a whole in New York. The commission has power as an incident to any investigation to determine the value of any particular utility.

REPORTS. It is made the duty of the New York commission to prescribe the form of reports required of common carriers, in such details and in such manner as they deem best. They are required to conform as nearly as may be to the reports required of common carriers by the interstate commerce commission. The reports required of gas and electric companies must show capitalization, financial transactions, receipts, expenditures, dividends, salaries and wages, location and description of its property, and such other facts as the commission may designate. Municipalities operating public utilities are required to report the financial data of such operation, and the description of the property and other facts which the commission may require. The commission may also require correction of any reports believed to be erroneous. The commission is required to make an annual report setting forth its operations and all facts deemed to be of interest to the people. The reports required by the Wisconsin law are more carefully detailed in the law. Every public utility is required to report in detail per unit, depreciation, salaries and wages, legal expenses, taxes and rentals, receipts from residual by-products, etc., total and net cost, gross and net profit, dividends and interest, surplus or reserve, and the price per unit paid by the consumers. The statistics gathered by the commission and the value of each public utility, must be published in the annual report.

ENFORCEMENT. Every order or direction of the commission in New York shall go into effect at a time designated by the commission in the order. A rehearing may be had on application, if the commission so determine, but such rehearing shall not stay the operation of the order or direction. Violation of any lawful order or direction of the commission is punishable by fine and each day's violation con-

stitutes a separate offense. The commission also has summary power to commence action in the supreme court to prevent by mandamus or injunction any violation or threatened violation of law or order of the commission, or to require anything to be done which the public utility has failed or is about to fail to do.

In Wisconsin the orders or directions of the commission go into effect twenty days after they are served, unless the commission otherwise determines. It is provided that no injunction shall be issued "staying any order except upon application to the circuit court or the presiding judge thereof, notice to the commission, and hearing." Violations of the law or orders of the commission subjects the public utility and its officers and agents guilty of violations to a fine.

COURT REVIEW. The fixing of rates and service by the commission is an administrative power and the courts are not given any powers in this respect in addition to their judicial power of determination in a suit at law. Both laws provide that the orders of the commission shall go into effect within a certain time after they are made. Any party aggrieved may bring an action to set aside any rate or regulation as unlawful or unreasonable, in the courts.

The New York law does not prescribe any form of procedure in cases arising under the decisions of the commission, except to give such cases preference on the calendars of the courts over all others of a civil nature except election cases. The judicial proceedings are left to be carried out under the present forms.

The Wisconsin law prescribes the form of procedure, which is to be followed in cases arising under the decisions of the commission. The provisions are largely for the purpose of providing speedy trial and determination of such actions as may be brought. Actions may be begun in the circuit court of Dane county against the commission, as defendant, to set aside any decision as unlawful, and an appeal may be taken to the supreme court by either party, within sixty days after the decision by the circuit court. Precedence is given over all other civil actions in any court. In any suit to set aside the determination of a commission the burden of proof is placed upon the party seeking to set such determination aside. Every such action must be begun within ninety days, or the right to begin suit is waived. A unique provision copied from the railroad commission law provides, that if any evidence is introduced before a court which was not introduced in the hearing before the commission, the court shall submit

such evidence to the commission and stay proceedings for fifteen days. The commission may then consider such evidence and amend or rescind its order as it may deem proper. If it amend the order, judgment shall be rendered on the amended order; if not, judgment shall be rendered on the original order. This provision is effective in preventing the discrediting of the commission's orders by having them overruled by the courts through new evidence. Its purpose is to have the entire case presented to the commission in the first instance.

CONCLUSION. In brief outline, such are the main provisions of the New York and Wisconsin public utility laws. It will be noted that each commission has ample power of investigation, determination, and enforcement. Much depends, therefore, on the character of the commissions whether the laws will be as effective as they are designed to be. An aggressive commission which at the same time is fair and judicial, has ample power to protect every interest involved and to insure justice to all concerned. A weak commission may completely subvert the intention of the law.

The New York law is similar in its provisions to the interstate commerce law, which it is designed to supplement. The commission is charged with great responsibility. Recognizing this fact the legislature made generous provisions for salaries and expenses; the commissioner being made the highest salaried position in the State.

The Wisconsin law insures effective administration by being placed in the hands of the present railroad commission. The law is modeled on the railroad commission law of Wisconsin, but contains some of the best features of regulation taken from English and other sources. It is a distinct advance over any other regulation law heretofore enacted in any State of the Union. Its provisions are based upon the fact that detailed and accurate knowledge is necessary for fair regulation. By the provision for valuing the property of public utilities and the uniform system of accounting, the commission is put in possession of a body of necessary information for equitable regulation. The law also recognizes the fact that competition by public utilities is impossible and the indeterminate permit is provided. Provision is also made for the accomplishment of municipal ownership when the municipality so determines. The law is clear and comprehensive, and when judged by the purposes of public utility regulation, it is an equitable solution.

These laws are in accord with the tendency of the times and their

working and results will have a distinct influence upon the regulation of public service corporations in the future.

JOHN A. LAPP.

Railway Passenger Rates. Numerous laws relating to fares on steam railroads have been passed during the 1907 session of the legislature. This is not the beginning of legislative dealing with railroad fares and charges, but never before have we had laws so uniform and extensive, and never before has the two-cent fare received so much attention as at the present time. Some half dozen States have passed laws providing for a flat two-cent rate on all railroads; others have classified railroads according to their length or earning capacity and have fixed the rates to suit the condition of the road. Some States have made the fare above two cents per mile, but as a rule these States are less thickly populated and the transportation facilities are not so well developed. Two States in the Union—Virginia and Wisconsin—have established permanent commissions and these commissions after long, careful, and scientific investigations, will decide the rates that the railroads in question may charge.

In treating this subject it seems best to consider briefly; first, some laws passed prior to 1907; second, legislation passed during the session of 1907; and third, decisions of commissions handed down since the beginning of the present year. Legislation during the 1907 sessions may be further classified as follows: first, States in which a flat two-cent rate was passed; second, States in which some consideration was taken of the ability of the road to reduce its rates either by considering the gross income per mile of the road, or its length; and third, States in which a higher rate than two cents was permitted.

Railroad rates as a rule are fixed by the company owning or operating the line the same as for any other business or service. In recent years, however, the legislatures of a number of the States, either directly or indirectly through a commission, have seen fit to fix a maximum fare above which it is unlawful for a transportation company to charge. Under its charter the New York Central Railroad is allowed to charge only two cents on its main line; the company also issues mileage books on the two-cent basis which are good on the branch lines. In 1906, Maryland passed a law (Laws, 1906, c. 174) providing that mileage books containing coupons for 500 and 1000 miles are to be kept at every ticket office of the corporation. The

purchaser of the book as well as any member of his family or any one of his employees, is entitled to the same rights and privileges as any other passenger. The book is not limited in time, but is good until all the coupons attached have been used. A fine of $50 is imposed on the railroad corporation for refusing to issue the mileage books and a like sum is also imposed if the conductor or agent refuse to accept the coupons in return for the transportation service rendered. The act does not apply to railroads chartered under the laws of the State if the gross passenger receipts do not exceed $5000 annually. Ohio was the first State to pass a flat two-cent rate. The law is short and simple. It states that a company operating a railroad in whole or in part in the State, may demand and receive, for the transportation of passengers on its road, not exceeding two cents per mile, for a distance of more than five miles; but the fare shall always be made that multiple of five nearest reached by multiplying the rate by the distance.

The laws of Illinois, Indiana, Minnesota, Nebraska and Pennsylvania passed at the present session, are very similar, differing only in detail. In each one of the States enumerated, a maximum two-cent rate is provided for. In Illinois it is unlawful for any corporation or company carrying passengers between points in the State to charge in excess of two cents per mile, but the law makes no provision for the free transportation of baggage. The minimum amount charged is fixed at five cents, and in determining the total fare, fractions of less than one-half of a mile are to be disregarded and all other fractions counted as one mile. If a passenger fail to purchase a ticket, fare at the rate of three cents per mile may be charged and collected and no provision is made for a return of the surplus. The penalty imposed for a violation of the provisions of the act is to be not less than $25 nor more than $100 for each offense. The fine may be collected by suit brought by the attorney-general of the State or by the State's attorney of the county where the penalty is recovered; in a suit brought by a State's attorney an extra charge of $10 is imposed as attorney's fees (Bill No. 406, Amendment No. 2). The law of Indiana forbids railroads to charge more than two cents per mile. The holder of an adult passenger ticket is entitled to have 150 pounds of baggage carried free of any additional charges. The minimum charges are fixed at five cents, as in Illinois, and if paid on the train may be collected at the rate of two and one-half cents, but the con-

ductor must give a receipt for the surplus, redeemable in cash at any ticket office of the company. The penalty for violating the provisions of the act are to be not less than $25 nor more than $100 (Laws 1907, ch. 42). The Minnesota law requires that adult passengers be carried for two cents per mile and be allowed to have 150 pounds of baggage. Any official found guilty of violating the provisions of the law is to be deemed guilty of a felony and punished by a fine not exceeding $5000 or imprisonment in the State prison for a period not exceeding five years, or by both such fine and imprisonment. In Minnesota nothing is said about fares collected on the train and the minimum charge is not fixed at five cents as it is in most States. The maximum penalty is greater in Minnesota than in any other State. (Laws 1907, ch. 97). In Nebraska the maximum rate is two cents per mile, and the minimum charge is fixed at five cents. Passengers are entitled to have 200 pounds of baggage transported free. No provision is made for fares collected on the train and no specific penalty is attached (H. R. No. 267). The law in Pennsylvania provides for a maximum two-cent fare for all passengers without regard to age. The minimum fare is fixed at five cents and passengers paying fares on the train may be charged ten cents in addition to the regular fare; but if this is done a rebate check, redeemable in cash at any ticket office of the company, must be given. In Pennsylvania the penalty is severe. It is not a maximum penalty as in Minnesota, but a definite penalty of $1000 for each and every offense, payable in the county where the illegal charge is made (Act No. 52).

Iowa and Michigan have not passed flat two-cent rates, but have classified the railroads according to their earnings per mile. A road's earning capacity is not the sole indication of its ability to reduce its fares and charges and still pay a reasonable return on the investment, but it seems more just than the method of putting all of the railroads of the State together in one class and making it a misdemeanor for them to charge more than two cents per mile. The Iowa law divides railroads into three classes and fixes the charges for each class. Class "A" with annual earnings of $4000 per mile, two cents; class "B" with annual earnings of from $3500 to $4000, two and one-half cents per mile; and class "C" with annual earnings of less than $3000, three cents per mile. This also includes baggage not to exceed 100 pounds in weight. A ten-cent charge is also added if the fare is paid on the train (Sec. 2077). In Michigan a distinction is made on the

basis of gross passenger earnings, upon the distance the passenger is carried, and between the upper and lower peninsula. Passengers are to be carried for a distance not exceeding five miles in the lower peninsula for three cents per mile, and for a distance not exceeding ten miles in the upper peninsula for four cents per mile. For all other distances for all companies, the gross earnings of whose passenger trains equal or exceed the sum of $1200 per mile, for each mile of road operated by the company, the fare is to be two cents per mile; and for all companies whose earnings are less than $200 per mile, the fare is to be three cents. In figuring the earnings and mileage of a road operated by the company the branch lines are to be included in the computation and the rate of fare is to be the same on all lines owned by the company. In all cases baggage to the amount of 150 pounds is allowed. The penalty for violating any of the provisions of the act is fixed at $500 for each secular day the railroad refuses to comply with the demands of the law (Senate enrolled act, No. 72, sec. 9).

West Virginia and Missouri have taken the extent of the line into consideration in fixing rates. In West Virginia the law is very much like it is in the States having a flat two-cent rate, except that it does not apply to independent roads under fifty miles in length; the maximum fare is two cents per mile and the minimum charge collected is fixed at five cents. When fares are paid on the trains an additional ten cents may be charged, but a rebate slip must be given the passenger. One hundred pounds of baggage is also allowed. The penalty for each offense is fixed at not less than $50 nor more than $500. The Missouri legislature has divided the railroads of the State into four classes; class "A" includes the trunk lines and all branch lines owned or controlled by them; class "B" includes all other roads owned or controlled by any trunk line company; class "C" is made up of all other roads of a greater length than forty-five miles; and class "D" takes in all roads less than forty-five miles in length not owned or controlled by any trunk line company. It would seem that this classification was made for the purpose of fixing a just and reasonable rate; yet only two classes are used for that purpose. The first three classes are included in one and the maximum charge is placed at two cents per mile. In class "D" or roads less than forty-five miles in length the rate cannot exceed four cents per mile. The penalty is fixed at not less than $100 nor more than $500. A two-cent

rate bill was also passed by the Arkansas legislature and put into operation by the commission. The law does not apply to all railroads.

The rate in North Carolina is fixed at two and one-half cents. These rates include baggage to the amount of two hundred pounds. No single fare need be less than five cents, and ten cents extra may be added for fares collected on the train, but no return of the surplus need be made. Independently owned roads sixty miles in length or less may maintain their present rates. Railroads constructed during 1906; railroads in the course of construction January 1, 1907, and railroads constructed during the years 1907 and 1908, may charge such rates as the commission determines to be reasonable. Mileage books of 1000 miles, good on all railroads on which the fare is the same as or less than the fare on the road selling the mileage book, are to be kept on sale at such ticket offices as the corporation commission shall direct. When the coupons are detached by any other railroad company they must be redeemed by the road which sold the book. The penalty is fixed at $500 for each violation and is payable to the person aggrieved (Passed March 2, 1907).

Alabama and South Dakota both have railroad commissions, but the legislatures have seen fit to fix a maximum rate of two and one-half cents per mile and allow the commission to make certain classifications. In Alabama the two and one-half cent rate applies to all lines over 100 miles in length, while the rates on lines under 100 miles are to be fixed by the railroad commission. It is made a misdemeanor to charge a higher rate than that provided for in the act, and a fine of $50 is imposed (Laws 1907, p. 36). The board of railroad commissioners of South Dakota has power to make a schedule of reasonable maximum fares and rates, but the provision is added to the law that the maximum compensation per mile for the transportation of any person with ordinary baggage shall not be greater than two and one-half cents, except upon narrow gauge roads. In fixing the maximum fare the commission is required to classify the railroads as far as practicable according to the amount of the gross annual earnings for the three years preceding the time when the classification was made (Laws 1907, ch. 213).

North Dakota also has a two and one-half cent rate, but the classification and charges are entirely in the hands of the legislature. The maximum fare is not to exceed two and one-half cents per mile for

distances exceeding six miles. The minimum fare charged need not be less than five cents, and the sum of ten cents may be added to the legal fare when paid on the train. Mileage books in denominations of 1000 miles good for the purchaser and designated members of his family are to be sold for $20. The penalty depends on the offender; if the railroad corporation is found guilty, the fine is to be not less than $500 nor more than $5000, and if any officer or agent is found guilty he is to be punished by a fine of not less than $50 nor more than $100 or by imprisonment not less than thirty days nor more than ninety days or by both fine and imprisonment (Laws 1901, ch. 199). Kansas has passed a law requiring railways to sell 500-mile tickets, good in the hands of the purchaser only, at the rate of two cents per mile. Two thousand mile tickets, good on all railroads, are to be sold at $50; and if all the coupons are used within eighteen months the carrier is to refund $9.50 to the purchaser. The enforcement of the law is put in the hands of the board of railroad commissioners and they may make all necessary rules and regulations (Laws 1907, ch. 272). The ruling of the State corporation commission of Virginia in a decision handed down April 27, 1907, is to the effect that after July 1, certain enumerated roads shall charge a maximum rate of two cents for the intra-state transportation of passengers. The Southern Railway Company is allowed to charge two and one-half cents per mile on its divisions or branches. Other enumerated roads are allowed to charge three cents, and still others three and one-half cents. The railroads in each of the four groups are enumerated. Railroad companies may collect an additional ten cents for fares paid on the train, and the minimum charge is fixed at ten cents for any single fare.

The railroad commission of Wisconsin in a decision handed down February 16, 1907, held that a three-cent rate was excessive and that it should be reduced to two and one-half cents per mile. The commission went further and recommended that 500-mile tickets, good for the purchaser or any member of his family, be sold at $10. In the investigation, which was perhaps the most searching, elaborate and scientific of any yet made, the whole question of railroad rate regulation was considered. The following paragraphs quoted from the summary of the Wisconsin decision will throw light on the question. "In order to determine whether or not a given rate is excessive or otherwise, it is necessary to ascertain: (*a*) the reasonable

value of the property of the carrier as a basis for the allowance of income for investment. (*b*) To make an apportionment to the State of its proper proportion of the earnings and operating expenses of the company. (*c*) To ascertain what portion of the gross earnings for the State are derived from intra-state and what from inter-state traffic. (*d*) To apportion on some equitable basis the expenses of conducting traffic and other legitimate expenses between the two classes of traffic. That while it may not be possible to make a separation of the expense of conducting passenger business from that of conducting freight that is absolutely correct, a separation can be made that is substantially correct for all practical purposes. Such separation is discussed and made in the opinion herein. That each branch of traffic should be self-supporting; that it is important to the people of the State that low freight rates should prevail, and there is no justification from an equitable or an economic standpoint in weighting the freight charges with any portion of the burdens of the passenger traffic, even if it could be done without violating the law."

Without doubt the safest plan for handling the difficult problem of railroad rates is the method used in Virginia and Wisconsin. In these States the ability of the road to reduce its rates is taken into consideration and no decision is handed down without due investigation and deliberation. There is no response to a clamor for reduced rates, unless a reduction would be just and equitable to all parties concerned. There is no pledging of party candidates and no serious attempt to take the matter out of the hands of the commission. In short, the whole question is taken out of politics and placed in the hands of a competent board. The railroad is looked upon as a business and the question is asked as to whether or not it is good business policy to command a reduction in the rates and charges.

ROBERT ARGYLL CAMPBELL.

Railway Passes. New Hampshire has passed a law (March 22, 1907) prohibiting railway passes in certain cases. The governor of the State is authorized to contract for the railway transportation of the members and employees of the legislature and various State officials. The contract is made in the name of the State, and the cost is paid from the treasury. This payment is in lieu of all mileage of members and employees of the general court formerly provided by statute. Those members of the legislature and officers of the State

who live more than two miles from the nearest railroad station receive twenty cents per mile weekly for their travel to and from their homes.

The law provides that any State officer whose transportation expenses are made by statute a charge upon the public treasury and for whose transportation authority is provided in this act, who requests for himself or another, accepts or uses any free pass upon a steam railroad, or any ticket upon a steam railroad for which he has paid a less price than is demanded of the public generally, and any officer, agent, or employee of a steam railroad corporation, who knowingly issues or delivers to any State officer a pass or ticket which entitles him to transportation at a less rate of fare than is demanded of the public generally, both are liable to a fine of not less than $100 nor more than $1000. The law also prohibits delegates to political conventions within the State from accepting passes or tickets at reduced rates on pain of a fine of not less than $100, nor more than $1000.

E. Watson Kenyon.

Roads. In a recent law ('07, c. 3) the province of Quebec made provision for road subsidies to local rural municipalities.

In order to be entitled to a subsidy the municipality must adopt a by-law ordering that all the local municipal and county roads, at the charge of the rate payers, be made, improved, and maintained at its expense with moneys levied by direct taxation for such purpose upon all the taxable property of the municipality.

The amount of subsidy allowed to any municipality is to equal one-half the expense incurred for making and maintaining roads during the previous year, but in no case is the amount to exceed $400. The rights of local municipalities in the subsidy may be transferred to the county provided the county takes charge of the work under the conditions prescribed.

BOOK REVIEWS

De l'organisation du Conseil Municipal de Paris. Par HENRI CHRÉTIEN. (Paris: Giard & Brière. 1906. Pp. 232.)

Le problème du mode d'élection des conseillers municipaux de Paris. Par DOMINIQUE PÉNARD. (Paris: Imprimerie Jouve. 1905. Pp. 144.)

La préfecture de police. Par EDMOND MOUNEYRAT. (Paris: Bonvalot-Jouve. 1906. Pp. 194.)

Les secrétaires de mairie. Par R. MARTINEAU. (Paris: Bonvalot-Jouve. 1906. Pp. 188.)

Les exploitations municipales, commerciales, et industrielles en France. Par PIERRE MERCIER. (Paris: Roustan: 1905. Pp. 310.)

Études sur l'œuvre économique des municipalités. Par MAURICE GAUCHERON. (Paris: Bonvalot-Jouve. 1906. Pp. 211.)

The past year has been perhaps unusually fruitful in monographic studies dealing with various phases of French municipal organization and administration. Many of these have dealt with matters of strictly local interest, the organization of a particular city, or with some special public service; but there are at least a half-dozen volumes of moderate compass which may be profitably brought to the notice of American students of comparative municipal government as dealing with topics of general interest.

Two recent volumes deal with the organization and powers of the municipal council of Paris and with the various proposals which have been brought forward from time to time looking to a reorganization or reformation of this body. Dr. Chrétien's treatise attempts a general exposition of the structure and working of the Paris council, dealing first at some length with the history of the body, then in detail with the methods of election, the questions of eligibility of candidates, the procedure of the council, its powers, and its relation to the prefects. A discussion and criticism of the various projects of reform

takes up the last and least important part of the book. The study has been prepared from the laws, from the council records, and from the parliamentary discussions and proceedings; it is well arranged, and gives in convenient form a fair and comprehensive survey of the important body with which it deals. One might have wished, however, that more attention were given to the organization, influence, and programs of the various partisan factions in the council for it is only through a clear understanding of these features that the attitude of the national government toward the work of the council can be properly realized.

M. Pénard's somewhat shorter study does not concern itself mainly with organization and powers, but rather with a criticism of the present method of electing councillors and the present relation of the council to the prefects and to the central authorities. The marked differences in population among the various quarter-arrondissements, ranging from seven to one hundred and eight thousand, is made the basis of a vigorous plea for a redistribution of seats or for some suitable change in the whole machinery of election. The volume shows convincingly that changes in the distribution of Parisian population have thrown the system of conciliar elections badly out of proportion with the result that the council, as at present organized, cannot be said to reflect civic opinion with any reasonable degree of accuracy. The writer does not minimize the important political and other obstacles in the way of any radical change either in organization or in powers; and he is inclined to recognize the desirability, for sentimental reasons, of preserving the arrondissements with their present boundaries, as the territorial bases of election. A considerable number of schemes are analyzed, and the writer sets forth, in his conclusion, a plan of reorganization which seeks to combine the better features of these various prior proposals.

Some four or five years ago students of municipal government in France welcomed a clear and comprehensive exposition of the position and functions of the prefect of the Seine.[1] M. Mouneyrat's volume now affords a concise summary of this official's colleague in the administration of Parisian municipal affairs, the prefect of police. The two monographs taken together provide in compact and reliable

[1] *Les Attribution du Préfet de la Seine.* Par Eugene Magné de la Londe. (Paris: Rousseau. 1902. Pp. 275.)

form all that the general student of municipal institutions need care to know concerning the direction of administrative matters in the French capital.

After dealing with the history of the police prefecture prior to the establishment of the office in its present form, M. Mouneyrat devotes the major part of his treatise to a systematic analysis of the various powers and duties of the prefect, classifying these under their various heads and defining clearly their scope and limitations. The respective powers of the two prefects are defined with clearness and precision. Considerable attention is also given to the legal nature of various prefectoral acts, distinction being drawn between *actes de gestion, actes de puissance publique,* and *actes judiciaires,* and in each case the methods of recourse against the acts and decisions of the official are discussed. In conclusion the writer deals with the annual budget of the prefecture and with the proposals which have been made looking to some change in the position and powers of the prefect of police.

Those who are acquainted with the inner workings of English borough government need not be told of the large and effective part played in the daily routine of administration by that usually hard-worked but almost invariably capable official, the town clerk. M. Martineau's monograph deals with the prototype of this officer in the towns and cities of France. The importance of the *mairie* as a centre of local administrative activity, and the very large amount of routine effectively performed within its walls have been well known to students of local government. But it may be doubted whether the services of the secretary of the *mairie* in the direction and supervision of this work have hitherto been adequately emphasized. The municipal code gives large powers to the mayor of a French city both as administrative head of the commune and as the local agent of the central government. In the exercise of these powers the mayor leans very heavily, however, upon the secretary who by long experience in his office has come to be the custodian of communal traditions.

M. Martineau has condensed a very comprehensive discussion of the position and functions of this important official into small compass, for the book treats fully of the methods of appointment and removal, eligibility, responsibility, remuneration, etc., of the secretary as well as of his daily duties. The volume gives evidence of a careful study of the jurisprudence of the administrative courts relat-

ing to the office and the sources of information are throughout the monograph definitely indicated in a convincing array of footnotes. An excellent bibliography is appended.

Two books which have interest for any who wish to acquire some familiarity with the economic activities of French cities are those of Messrs. Mercier and Gaucheron. The former is somewhat the more elaborate of the two and deals especially with the legal powers of the municipality to engage in productive undertakings. On this point the jurisprudence, especially of the council of State, has become extensive in recent years and the writer has examined it with diligence and care, setting forth the general results with some degree of clearness. The various productive municipal enterprises are discussed one by one, attention being given even to the minor services, such as the municipal bakeries, pharmacies, loan offices, and so forth. A lengthy chapter treats of the financial side of the question and the relation of municipalization to the local tax rate and to the increase of municipal indebtedness. A very useful feature of the volume is a well-selected bibliography of reports, monographs, theses, and articles relating to the question of municipal ownership in French cities.

The treatise of M. Gaucheron is of a somewhat different nature, little attention being given to the legal powers of the municipalities and the main stress laid upon the actual work of the cities along economic lines. The experience of French cities in the matter of water supply, of lighting by gas and electricity, in the provision of means of transportation, in the erection and maintenance of workingmen's dwellings, as well as in the provision of several minor services are all summarized. In each case the experience of French municipalities is contrasted with that of various cities in other European countries, particularly with the cities of Great Britain. The volume contains many statistical summaries the compilation of which must have cost the writer much tedious labor. The arrangement of data is not always of the best, but it must be noted that the subject, from the author's standpoint of treatment, does not readily lend itself to symmetrical arrangement. The sources from which figures and facts are drawn have been indicated with definiteness. On the whole, M. Gaucheron's monograph ought to prove highly serviceable to anyone who desires, in compact form, a general survey of what the cities of France have done and are doing in the way of providing both the major and minor public services for their citizens.

WILLIAM BENNETT MUNRO.

The New Far East. By THOMAS F. MILLARD. (New York: Charles Scribners' Sons. 1906. Pp. xii, 319.)

Paix Japonaise. By LOUIS AUBERT. (Paris: A. Colin, 1906. Pp. 351.)

The International Position of Japan as a Great Power. By SEIGI G. HISHIDA. (New York: Columbia University Press. 1905. Pp. 289.)

Mr. Millard describes his book as a "digest of an accumulation of material and opinion, supplemented by a flavoring of my own views." This flavoring, which is quite pervasive, is in essence as follows: The favorable opinion to Japan in Great Britain and America is the result of clever manipulation. The war itself was carefully planned by the Japanese statesmen, Russia was taken unawares, and the Japanese people rushed to arms because "their minds had been adroitly played on for years." In the view of the author, the war was the result of an ambitious policy of expansion on the part of the Japanese statesmen. While Russia wanted peace, they forced her into war on the claim that their own national life was in danger. Though they solemnly acknowledged the independence of Korea, they immediately destroyed her neutrality and treated her practically as a conquered province. The author's interpretation of details is entirely dependent upon these general principles. Thus in discussing the need of Japan for a more extended territorial basis, he assumes that the Japanese will not or cannot cultivate their own country profitably. As an argument to support this charge, he adduces the solicitude of the Japanese government to improve agriculture, entirely overlooking the fact that, acre for acre, the Japanese lands are made to produce more than the lands of such prominent agricultural countries as Germany, France, Italy, India and Egypt. The author criticises Japan for landing soldiers in Korea and using that country for transit and for military operation. As Korea, however, was the main cause of warfare, nothing is more natural than that Japan should act quickly to prevent an occupation by Russia. The Japanese government in reply to charges of Russia said that it drew a "sharp distinction between the landing of the Japanese troops in Korea in the actuual circumstances of the case, and the sending of large bodies of Russian troops to Manchuria while peaceful negotiations were still in prog-

ress." The author criticises the Japanese for invading neutral territory during the battle at Mukden, although, as is generally known and as he himself recounts, Russia had previously engaged in similar operations. He is full of suspicion concerning the motives of Japan with respect to Manchuria, stating his belief that Chinese authority would not be effectually restored, and speaking of numerous loopholes for equivocation in the Chino-Japanese treaty. Among the latter he mentions the fact that the peninsula on which Port Arthur is situated is described as Liaotung instead of Kwantung. As a matter of fact, it was always so described without further definition by the Russians, to whose rights the Japanese succeeded. But the author's apprehensions in this matter have since been falsified by the action of the Japanese government, in definitely fixing the territorial limits of their possession, an act which the Russians apparently never thought of. Among other views of the author with which the book is flavored are the belief that the Japanese were instrumental in furthering the Chinese boycott against American goods; that they entertain no ethical beliefs which they will not readily sacrifice to expediency; and that it would be far better for American interests to have Russia control Korea.

Though the author avows impartiality, his antagonism to the Japanese is so evident and his criticism of their national motives so one-sided as at times to become irritating to the reader. The author's insight into the shrewd calculations of international politics would seem to have restricted his vision and prevented him from giving their full importance to the broader aspects of the international situation. Thus he fails to recognize the fact that the war was to Japan a struggle for existence, fought close to her national territory, to which, in the event of ill success, it would have been immediately transferred with disastrous results to herself; while Russia was fighting for the conquest of territories far from the center of her national life. In attributing to Russia a desire for peace he forgets that she was in fact all the time acting in a decidedly hostile manner both to China and to Japan, and that it was the projection of Russian "interests" into Korea which caused the Japanese to realize that resistance to Russian encroachment could no longer safely be delayed. The high-handed manner of Russian diplomacy in the East would not have been endured by any self respecting independent nation whose interests were essentially involved.

Mr. Aubert's book gives us both clearer conceptions and more specific instances. His personal knowledge of the situation is less intimate, but, through his powers of analysis, he is enabled to illuminate the situation, and his statement of policies and conditions is statesmanlike. In the preface he speaks of the prevalent European ignorance of Japan. At the beginning of the war Europe was surprised by the rashness of the islanders. But when Japan had proved her force, she was accused of dissimulation and trickery for having deceived Europe so well. He compares the far better knowledge of things Japanese in America to the European ignorance in these matters, and explains the latter through the historic notions left behind by the Mongol invasion in Europe and through the long interruption of land communication between the two continents. The first chapter of the book is a study of advanced Japanese opinion on the foreign policy of the empire. The author's material is chiefly gained from Japanese newspapers and periodicals, and from the publications of such societies as the Kyoiku Koko (Society of Eudcation) and the Tobo Kyokai (The Oriental Association). The ideas which these report take the following form. The peace of the Orient is threatened by the weakness of most of the Oriental nations, which encourages inroads on the part of European powers, If Oriental civilization is to be preserved, it is therefore necessary that an Oriental power should be strong enough to maintain order and to protect the Orient. Japan is evidently called to perform this service. In order to be able to do so, it is necessary that she should have a foothold on the mainland of Asia, *i. e.*, a controlling influence in Korea, and, in the opinion of some, even in Manchuria: The peace thus secured by the efforts of Japan through the establishment of a Monroe Doctrine for eastern Asia is the "Japanese peace" which the author is referring to in the title of his book. By the side of this extreme theory of the policy of Japan the author cites the more conservative expressions of statesmen like Marquis Ito. Some of the men whose opinions the author reports have since come into direct conflict with the government, through their denunciation of the moderateness of the terms of peace. In dealing with specific incidents the author is inclined to be fair to the Japanese. For the boycott he holds them responsible only very indirectly in that their victory stirred up the consciousness of Asian peoples. It is in fact a prime political interest of Japan that all disturbances should be avoided

which tend to invite further foreign interference. The author's account of the attitude of the American opinion towards Japan and Russia during the war is very informing, in that it shows the influence of historic relations and of literature upon national predilections. Although he deals with Russian policy only incidently, his opinion of the exclusive economic system inaugurated in Manchuria before the war is by no means favorable.

Mr. Hishida's treatise is a historical account of the international relations of Japan. The history of Japan has not yet been scientifically sifted, and the author occasionally does not distinguish between tradition and history as in the case of the exploits of the Empress Jingo in Korea. He, however, makes good use of reliable secondary materials and gives a clear and interesting historical account. The more recent events are dealt with more directly from the sources, and the author gives a very satisfactory and impartial account of the treaty revision, as well as of the Korean question and the negotiations leading up to the war. Unhappily, however, he slurs over the part which the Japanese *soshi* played in the murder of the queen of Korea. The discussion of Korean neutrality and independence is satisfactory. The author does not go so far as some English authors in regarding the Korean protectorate as dating from before the war, and he cites with approval the opinion of Nakamura who regarded Korea as a *de facto* ally of Japan. He believes that the political interest of Japan in east Asia far transcends that of any European power, and states that Japan would be ready to assist Siam in maintaining its independence. Japan is disposed to defend China, "but should the Chinese again enter upon a course offensive to western civilization, Japan would coöperate with the Christian powers, as she did in 1900." This book, as do the others, shows that the times are past when Japan can be looked upon as an æsthetic plaything; at present she must be regarded as one of those great powers, whose actions are determined by national interests not always harmonious with each other.

PAUL S. REINSCH.

Liberty, Union and Democracy. By BARRETT WENDELL. (New York: Charles Scribner's Sons. 1906. Pp. 327.)

The work includes three essays on the subjects that form the general title, together with a prefatory essay on the National Character of America. The subjects are attractive to students of political

science; the treatment is not. The type is the familiar one of the patriotic sermon: we are a great people, of reverend ancestry, and we should try to live up to the noble ideals of our history.

It is interesting to note the transformations that facts undergo under the stress of this hortatory purpose. On p. 94, patriotic devotion to the flag, that "now seems so instinctive as to be among the laws of nature," is referred to in connection with a historic incident showing "how little it was developed in Revolutionary times." But on p. 105, we are told that "from the very beginning, as every tradition of the Revolution must remind us, the flag of our country has been held to symbolize Liberty;" also, "to symbolize, as well, the ideal of Union;" also, "from beginning, too, as we may remind ourselves by searching wherever we will, throughout our national literature—and for that matter, throughout our public utterances, memorable and trivial alike— it has been held to symbolize the ideal of democracy." But, on p. 184, we are told that when the "Union emblem" was first displayed "floating above the insurgent lines at Cambridge * * * the ideal of American Union could have possessed no such reverend quality, no such sacred and stirring power, as some of us now imagine to have been inherent in its always." Again, on p. 186, we are informed that "to Union sentiment, nowadays, of course, the United States of America is a term which seems to assert our almost divinely sanctioned national unity; but taken by itself, as it was written in that same year, 1776, when Washington had first hoisted the Union flag at Cambridge, it involves, so far as I can see, no necessary suggestion of anything more than a temporary alliance."

How can these various assertions be reconciled? It is evident, that they are not meant to be regarded as statements of fact. They are rhetorical outbursts, like the pyrotechnic gush of a Roman candle, meant for sparkling display, and not to give light to see by.

The filio-pietistic frame of mind is frequently in evidence. We are told that "the fathers of New England were intellectually active to a degree which did not disturb the repose of their contemporaries to the southward. They wrote and published copiously." It may be admitted that the degree of their intellectual activity did not disturb the repose of their contemporaries anywhere, but if what is meant is that early New England was a scene of fruitful, literary activity, against this opinion may be set the critical judgment expressed by Charles Francis Adams in his essay, entitled Massachusetts: Its

Historians and Its History. The conclusion at which he arrived was that New England claims to literary eminence date no farther back than 1835. It describes the literary activity which then began as a growth springing up after the melting of the theological glacier that had sterilized the New England intellect for 135 years previously. According to Professor Wendell (p. 72) "the vital origin of our national temper * * * can be traced to the instinctive idealism of pre-revolutionary England, strengthened and defined by the intensely orderly idealism ingrained in those who faithfully accepted the Calvinistic creed." What to Mr. Adams appeared to be a glacier, arresting development, to Professor Wendell appears to be a germinal influence. Which is right? Mr. Adams submits evidence. Professor Wendell does not. Facts are stubborn things and are decidedly inconvenient to those who still find pleasure in writing history as a New England serenade.

An invidious sectionalism is strongly marked in the work We are told (p. 142) that "almost unperceived, the appeal to general Northern emotion of the separate State in which a citizen chanced to reside became less and less insistent; the appeal of the United States became stronger." When? Was this the case in the days of the Hartford convention? We are further told that in this alleged development of Northern sentiment, "there came to associate itself with the name of Liberty, still ardently and traditionally cherished, an increasing degree of insistence on the liberty of the individual." But on the very next page, "the prohibition laws, so general throughout the North," are referred to as "an arbitrary supervision of personal conduct unsurpassed in any despotism." Puzzle: how can the particular case be reconciled with the general statement?

In discussing the growth of national sentiment, Professor Wendell (p. 182) illustrates it by comparing the union of States to the bonds of wedlock. He remarks: "Now, some similar conception, has tended, at least in the North, to sanction and sanctify our national ideal of Union." The sectional twist given to the remark becomes grotesque in view of comparative divorce statistics as between the North and the South. In general, sectional allusion in the work has a character which was once unfortunately prevalent, but which it is now surprising to find in a serious work of recent production.

Occasionally, one comes upon passages which seem to be almost in the vein of Jefferson Brick. For instance, we are told (p. 255),

"To Europe, the rule of the people means something gloriously Utopian. To America, this rule means something immemorially familiar." Does the rule of the people appear as merely gloriously Utopian to the people of Switzerland, for instance? A prefatory note says that the work has its origin in lectures delivered at the Sorbonne. One wonders whether the author made that statement to an audience of citizens of the French Republic. If so, it is to be feared that they may have imagined that scholarship in this country still lingers at the stage that gave point to Sir Henry Maine's reference to the "nauseous grandiloquence of the American panegyrical historian."

And yet, if one does not expect anything more than to be edified on conventional lines, one might well admire the literary polish of Professor Wendell's style, and obtain from the work a feeling of complacent satisfaction mingled with virtuous desire. Such results probably accomplish its purpose and set up the standard by which the performance invites judgment.

HENRY JONES FORD.

The National Liberal Federation: From its Commencement to the General Election of 1906. By ROBERT SPENCE WATSON, LL.D. With an Introduction by the Rt. Hon. Augustine Birrell, K.C., M.P. (London: Fisher Unwin. 1907. Pp. xii, 318.)

One of the most obvious needs in the literature of political science today is a history of political parties in England in the nineteenth century. There are monographs covering phases of the subject such as Kebble's *History of Toryism* (1886); Roylance Kent's *The English Radicals* (1889); and J. Bowles Daly's *The Dawn of Radicalism* (1892). But there exists no history of the tory party from the death of Pitt to the end of the late Lord Salisbury's premiership; nor is there any history of the evolution of the liberal party from the days of Fox, Grey, and Melbourne; from the time when the whigs were the dominating influence and the liberal party was in the ascendancy, to the days of the liberalism of Gladstone and Harcourt, and of Campbell-Bannerman and Morley.

What is needed is a work on the lines of Cooke's *History of Parties* (1840); a history that shall treat of both parties in the nineteenth century as Cooke treated of them in the eighteenth, and up to the end of the last unreformed House of Commons. Only in this way can the

history of political parties in the nineteenth century be adequately presented. It is only by such treatment that it can be made clear how the two parties have acted and reacted on each other; how and why toryism, as judged by much of its recent legislation, has lost some of its old characteristics and taken on new ones; and only by such handling of the subject as Cooke applied to the history of parties from the Restoration to 1832, can it be shown how whiggism has lost most of its old power over the liberal party, and how the older liberalism—the liberalism of the era of the second reform act—has been permeated and altered by the new radicalism.

Until such a history of parties is forthcoming, monographs of the character of those named at the outset of this review are welcome, and serviceable; for every one of them adds much to the existing knowledge of parties and party conditions in England. To American students of English political history, Dr. Robert Spence Watson's history of the *National Liberal Federation* will make a strong and peculiar appeal; because it is the only monograph that treats of party organization in England. The other monographs are concerned with the development of the principles of toryism, whiggism, liberalism and radicalism, and with the men who have been foremost in the advocacy of these principles.

Principles are by no means neglected or ignored in Dr. Watson's monograph. No one who is familiar with contemporary politics in England, and with Dr. Watson's prominence among liberals, would associate him with a book on politics in which the principles of liberalism and its actuating forces were not sympathetically and adequately treated. But in addition to the presentation of these phases of the subject, Dr. Watson's book is remarkable for the insight which it gives into the organization of the liberal party in the constituencies, and for his tracing of the influence which this organization—both local and national in its scope—has had on the liberal leaders, the liberal members of the House of Commons, and, through them, on Parliament and on legislation. The numerous crises through which the liberal party has gone since the establishment of the National Liberal Federation, at Birmingham, in 1877, can be followed in the pages of Dr. Watson's monograph; not, it is true, from the standpoint of general history, but rather from that of a man active in the work of the federation and whole-heartedly interested in the popular political advancement which it is the purpose of the federation to forward.

As there is an excellent index, Dr. Watson's book can be made to serve as a handbook to English liberalism of the last thirty years; at any rate as a guide to the attitude of organized liberalism to the numerous political questions which have come up for discussion in Parliament and in the constituencies in that period.

Room must be found for one extract from Dr. Watson's book, as it shows the attitude towards party machinery in the United States of a man long prominent in liberal organization. "There has," he writes in reference to the headquarters of the National Liberal Federation in Parliament Street, London—the headquarters which are in close association with the liberal whips in the House of Commons—"never been any attempt to direct local work from the central office; whilst there has always been the greatest readiness to send all such assistance asked for as was within the means of the federation. The doctrine upon which it was founded, and which it has always held, is that it only really exists in its component parts. All power comes from them; and it is of vital importance that they should be living, active and earnest; and also that they should be strong and independent, only making use of the central office for information and aid in times of serious difficulty. Fault has occasionally been found with the central committee because they have never endeavored to exercise anything approaching to autocratic power; but the idea that the federated associations should lean upon the center for support, or be under its control and command, is contrary to the root idea of the federation, and abhorrent to the very principles of liberalism. Thus, we should really become the American caucus; thus we should get the boss reprimanding and replacing local leaders and agents; thus would our politics become machine-made; and we might win as many political victories as now, but all that makes politics of true worth would be at an end; the savor would have gone out of political life."

EDWARD PORRITT.

The Electoral System of the United States. By. J. HAMPDEN DOUGHERTY. (New York and London: G. P. Putnam's Sons. 1906. Pp. iv, 425.)

As its subtitle indicates, this volume is a history of the American electoral system, a study of the perils attending its operation, an account of the several efforts that have been made to avert these perils and a proposed remedy by constitutional amendment. The volume

fulfils very well the promise of its title, and it will be found valuable both to the student of history and to the student of political science. The historical part sets forth the provisions of the Constitution relating to the election of president and vice president, examines the inscrutable words, "the votes shall then be counted," and attempts, to determine the inquiry where the Constitution intended to place the counting power, whether in the president of the senate, in the two houses combined, or whether no one at all was empowered to count. There is here a plain *casus omissus* in the Constitution, as it is impossible to ascertain certainly the intent and meaning. The history of the counting is traced in detail and an account is given of the various disputes relating thereto. The author examines the various bills and proposals that have been offered in the way of amendment to the electoral system, and points out the early breakdown of the system and the danger of its continuance. The author says, very correctly, that if the dangers of the system were commonly understood it would be abolished.

Mr. Dougherty devotes a chapter to the theories of counting and the bill of 1800, one to the act of 1887, and two chapters to the experience of counting from 1793 to 1873. Proper appreciation is given to Senator Oliver P. Morton's clear and statesmanlike recognition of the dangers of the system and to his efforts at reform. The volume goes at length into the disputed presidential election of 1876, giving a chapter to the debates leading to the creation of the electoral commission, and three chapters to the four notable cases—of Florida, Louisiana, South Carolina and Oregon—that came up for decision before the commission. The legal and constitutional points involved in the disputed cases are explained as briefly as clearness of interpretation will permit within the scope of such a general work.

Mr. Dougherty points out with precision and detail the various defects in the practical working of the present system. The tendency toward magnifying the large States and suppressing the small ones, toward suppressing minority opinion in States always carried by one party, toward machine manipulation and fraud in the pivotal States; these and other evils of the general ticket system are made apparent, and they are amply illustrated from election returns since the rise of the party convention system in 1832. The district system of choosing electors, it is pointed out, is preferable and would encourage opposition parties in States always carried one way, but it is subject to the evils

of the gerrymander and it would practically duplicate a congressional election. The danger of disputed returns, the assumption by congress of unwarranted power over the count, the choice of an ineligible elector, the possibility of a State college having its meeting on the wrong day, the danger of partisanship in congress and the consequent sacrifice of the vote of a State, the absolute, czar-like power a State legislature has over the method of choosing the electors—a power of such a nature that it is beyond the control of the people of the State through their organic law, while the legislature might defiantly arrogate the power to itself, or bestow it upon the judiciary or upon any agent or board or committee—these evils and dangers lead Mr. Dougherty to believe, as every one who reads his book will also be led to believe, that there is no safe and sane remedy short of a constitutional amendment. Such an amendment Mr. Dougherty has carefully and elaborately worked out. He would abolish the electoral college entirely, while, as a means of retaining the relative power and importance of the States in the election, he would still allot electoral votes to each State as at present and divide these votes among the several candidates in exact proportion to the popular vote received by each. The candidate receiving the highest number of presidential, or electoral votes (no electors would be needed) should be declared elected president. An elaborate system for the return and counting of the electoral votes is indicated. Under this scheme the State would control its own count and determine the qualifications of the voters. The States would gain in dignity; sectional differences would vanish; minority sentiment would gain its due share of influence; citizens would have a larger share of influence over the nominees; no impediment would exist between the voter and the result; the voting power of all citizens would be equalized; and no ballot would become a cipher, as every vote would count whether it were cast for the winning side or not.

Mr. Dougherty's volume is worthy of the thoughtful attention of our national legislators and statesmen. It should be in their libraries, and in all public libraries and thus be made accessible to intelligent American citizens.

It may seem ungracious to point out minor errors in so useful a volume. The composition of the electoral commission of 1877 is misstated. The majority of the senate members were republicans, of the house members, democrats (p. 135). Mr. Lamar, of Mississippi,

and Senator MacDonald, of Indiana, are attributed to Louisiana (pp. 131, 166), while Randolph is assigned to Michigan (p. 100), and Bland, of Missouri, to Mississippi (p. 132). These and similar slips are easily remedied. On the whole the volume deserves to be recognized as one with a distinct and worthy purpose that has been well executed.

JAMES ALBERT WOODBURN.

Spanish-American Diplomatic Relations Preceding the War of 1898. By HORACE EDGAR FLACK. (Baltimore: Johns Hopkins Press. 1906. Pp. 95.)

This monograph by Dr. Flack is an outgrowth of work done in the seminar of political science at the Johns Hopkins University. The method of the writer is to state the principles of international law bearing upon the subject to be considered, and thereby to test the theory and practice of the United States during the late Cuban insurrection. The most valuable portion is the treatment of the obligation of neutrals toward a conflict where the midway status of insurgency has been accorded and belligerency denied. The frequent insurrections in Spanish-America of a minor character, undeserving of the rank of belligerency, make absolutely imperative a clearer notion of the relative rights and obligations of insurgents, parent States and neutrals. Toward this end the restatement of the author has helped. He, however, defends a doctrine of neutral obligation to suppress the so-called juntas and filibustering which throws a greater burden on neutrals than English and American writers have been willing to admit. In this, as in several other particulars, Dr. Flack has been inclined to follow the continental authorities on international law. The United States government stood committed to a degree of vigilance in the suppression of filibustering which would make engagement in it a dangerous business, but denied that the obligations of neutrality required more, or that the belligerents could shift the burden of suppression from themselves to neutrals. In truth usage in the matter of what aid neutral subjects may lawfully give to belligerents with whom they sympathize lags behind the strict theory of neutral conduct. This is particularly true in the practice of the United States where there exists a predisposition to sympathize with revolutionists.

The chapter on intervention, which is termed the main subject of

the book, finds against the United States on every technical ground for intervention which the president and congress advanced. This conclusion was the logical deduction from the application of rules devised originally to reduce to a minimum the occasions for interference with the sovereign right of each State to work out the solution of its own internal affairs. Jurists generally recognize that there are extraordinary and exceptional cases which cannot be brought within the ordinary rules of international law. Dr. Flack with this in mind admits the possibility of a moral ground for intervention as valid, though not legal, if the United States exhausted every diplomatic means of accomplishing its object, and a final chapter deals with the efforts put forth by Spain to avoid war. He is convinced that had the United States met every concession of Spain in a conciliatory spirit, war might have been avoided. The most severe criticism upon this view is that it accepts diplomatic representations at their face value; that it ignores a century of experience with Spanish attempts at governing colonies; and that it neglects the more important consideration that the concessions proposed by Spain had not been accepted by the insurgents nor was there any likelihood that they would ever accept them. Any plan for a settlement, however satisfactory to the United States and Spain, was no settlement in fact until it comprised the third party. The main issue with Spain was never in reality the Maine indemnity, however confused the public mind may have been, nor was it the settlement of the claims of American citizens against Spain. It was the termination of the war in Cuba.

Though there is an opportunity for a difference of opinion upon some of the conclusions this does not detract from the real value of the work as a scholarly statement of the principles of international law that ought to govern a State in its conduct as a neutral, and as a critical review of the public acts and declarations of the United States on the only occasion in nearly a century's time in which it was really tested as a neutral. ELBERT J. BENTON.

Early Diplomatic Negotiations of the United States with Russia. By JOHN C. HILDT. (Baltimore: Johns Hopkins Press. 1906. Pp. 195.)

The university study under this title is a product of the seminar in history at the Johns Hopkins University, and presents the origin of

formal diplomatic relations between the United States and Russia, and the course of negotiations up to the conclusion of the treaty of 1824. Until 1815 the United States looked to Russia for protection, but with almost invariable disappointment. Chapter IV on the Russian offer of mediation in the war of 1812 makes it clear that Russia sought to checkmate the logical alliance between France and the United States which the outbreak of the war between the latter and England threatened, and that the offer was not extended in good faith simultaneously to both belligerents as claimed. Chapter VII on Spanish-American affairs is probably the most valuable portion. Russia invited the United States to accede to the Holy Alliance in order to prevent her from acting with Great Britain and from acknowledging the independence of Spanish-American colonies. The American authorities, while they were desirous of maintaining the most cordial relations with Russia, were distrustful of her motives as expressed in the invitation, and utterly opposed to any form of entangling alliances. The result was that an invitation, the significance of which was scarcely understood, was carried without in the least impairing the apparent cordial relations with Russia. Russian influence was of practical value to the United States in the war of 1812. Russian representations hastened the ratification of the Florida treaty. From the beginning it was the settled policy of each to cultivate the other's friendship, though an unnatural friendship prompted by the peculiar condition of European affairs and by no real sympathy or common purpose. Whenever either sought to advance the policies for which it stood, it found the other holding aloof. When the United States endeavored to secure from Russia recognition of more favorable neutral rights Russia was lukewarm to the subject and certain of the impracticality of the negotiation. When Russia sought to promote the system for which the Holy Alliance was devised the United States put forward the doctrine of no entangling alliances.

Little need be said of errors. "Erving" on p. 120 is manifestly a printer's slip for Irving. The statement on p. 120 that in the treaty of 1824 the United States conceded to Russia two minutes of territory which it had claimed should of course read twenty minutes. The merit of the work is the careful and exhaustive synthesis of the diplomatic correspondence, in print and in manuscript, available in American libraries. It is essentially Russo-American diplomacy as

the official representatives of the United States interpreted it, but it illustrates how good work can still be done from purely American sources. ELBERT J. BENTON.

China and Her People: Being the Observations, Reminiscences and Conclusions of an American Diplomat. By the HON. CHARLES DENBY, LL.D., Thirteen years United States minister to China. (Boston: L. C. Page and Company. 1906. 2 vols.)

It seems an ungracious act to speak harshly of what might be regarded as the memoirs of the late Col. Charles Denby, for years a faithful servant of his country and his government in many a difficult situation. Looking back on a long, well spent career, he describes his experiences and sets forth his opinions with an honest simplicity that almost disarms criticism. We should, perhaps, feel less inclined towards severity, were it not for the extravagant praise in the preface. Indeed, the editor has much to answer for. We can not help wondering whether other, more skillful, hands might not have culled better fruits from the reminiscences of one who witnessed so much that was interesting. Frankly speaking, the book is a complete disappointment. In his thirteen years of diplomatic service, Colonel Denby had a chance to see a great deal and he took part in many important affairs. We might well hope to get the benefit of this in the two little volumes published under his name. Unfortunately, such is not the case, for it is hardly an exaggeration to say that they contain almost nothing which even a very moderate student of Chinese affairs did not know before. The chapters straggle along after one another as the author wanders pleasantly over his subject. Personal experiences, facts already well-known, opinions on relevant and irrelevant topics, fit comfortably in together as best they may. The whole is not without a certain charm, but anyone in quest of real instruction will be sadly disappointed, all the more so, from having perhaps expected a good deal beforehand. Some of the information given is at first hand, none the less it is seldom new. The views expressed are those of an upright Christian gentleman, whose honesty all must respect, but most of them are hardly profound. Thus, speaking of the empress dowager before the year 1900, he declares (I, p. 241): "At that time she was universally esteemed by foreigners, and revered

by her own people, and was regarded as being one of the greatest characters in history, ranking with Semiramis and Catherine, but it must be said she never ranked with that pure, great, and unrivalled character—Victoria." He says of Li Hung Chang (II, p. 141). He was a great man—probably the greatest that his country has produced since Confucius." If we turn to the subject of recent American expansion, we find: "Certainly it involves problems which will test the strength of the Constitution—but, fortunately, this old document is elastic, and expands and contracts at the will of the great lawyers who interpret it. The beacons of progress on the borders of the Pacific were luring us on. From the shores of this once pathless ocean and from the myriads of people who live on them, the siren song of progress was swelling in our ears, and eve' did not close them to the entrancing melody as Ulysses did" (II, p. 224). Colonel Denby admires Japan. "Osaka is rivaling Birmingham. Wonders of wonders, Japan has a parliament, constitutional government has taken the place of feudal rule. There are political parties. Japan loves the United States. The Fourth of July is a day to celebrate. Her legislators understand the Monroe Doctrine, and their loudest ery is 'Asia for the Asiatics' " (II, 225). He declares that "the war between Japan and China did not come about by reason of any fixed determination on the part of Japan to begin hostilities" (II, 222), but adds, half a page later: "The idea of engaging in a foreign war finally commended itself to the emperor of Japan, because a war would consolidate his people, who were restive and discontented." In view of the character of certain recent American consuls, and notably in China, it is interesting to read: "Every man in either the diplomatic or consular service makes a reputation which is as well known at the state department as a man's reputation is in the village where he resides. The department knows, and gauges at his true value, every man under its control. All of its employees pass for exactly what they are worth" (II, 211). No one could wish more than the state department itself that these optimistic statements were true.

The two volumes are prettily gotten up, and some of the photographic illustrations are interesting, even if they are too miscellaneous. They include pictures of things no longer existing when Colonel Denby was there, such as the observatory in Peking with the astronomical instruments taken away in 1900; the Ketteler arch, and others that do not properly belong at all, for instance, the portraits of Dewey

and Witte. As the editor admits that his supplementary chapter on the recent war is "undoubtedly full of faults," comment is unnecessary. ARCHIBALD CARY COOLIDGE.

A Decade of Civic Development. By CHARLES ZUEBLIN. (Chicago: The University of Chicago Press. 1905. Pp. vii, 188.)

Professor Zueblin has in this volume brought together and revised a series of papers originally published in *The Chautauquan,* dealing mainly with the material development in American cities during the past decade. There is a chapter on the new civic spirit, and one on the training of the citizen. But most of the book deals with such external improvements as parks and public buildings in some of the principal cities.

In these fields, there has been a rapid advance both in ideals and accomplishments. And the author has no difficulty in showing that remarkable progress has been made. But the book can hardly lay claim to much permanent scientific value. Written for a popular audience, and in an obviously optimistic strain, there is no serious critical discussion. It serves a purpose, however, in relieving the gloom caused by the cloud of pessimistic books and articles on political conditions in American cities, by bringing into view some of the brighter and more agreeable aspects of our municipal conditions.

J. A. F.

NEWS AND NOTES

Personal and Bibliographical

J. W. GARNER

Title pages and index for volume I of the American Political Science Review will be sent out with the November issue.

Prof. Stephen Leacock of McGill University has been appointed by the trustees of the Rhodes Scholarships Foundation to spend next year on a lecturing tour throughout the more important British colonies.

Prof. Charles Gross of Harvard, plans to spend the year in London, having in hand the task of editing a volume on *The Law Merchant* for the Selden Society.

Dr. J. C. Hemmeon, who served as instructor in economics in the University of Illinois during the past year, has been appointed lecturer in political science at McGill University, Montreal.

Mr. W. E. Lunt has been appointed traveling fellow in government at Harvard University and will spend the year partly in England and partly at Rome.

Prof. George Grafton Wilson, of Brown University, and of the U. S. Naval War College, has been appointed lecturer in international law at Harvard for the year 1907–1908. He will give three courses entitled International Law, International Relations, and International Cases (advanced course).

The Harvard Toppan prize of $150 for the "best dissertation upon a subject in political science" has been awarded, for the year 1907, to Frederic Wayne Catlett, for an essay on The Government and Parties of Japan.

A new "College of the Political Sciences" will be opened this fall by the George Washington University, offering both graduate and undergraduate instruction, the primary aim of which will be to prepare men for the public service. The new college is the outgrowth of what

was formerly known as the graduate department of politics and diplomacy. The following additions to the faculty have been made: W. W. Willoughby, of the Johns Hopkins University, will give two courses, one on the principles of political science, the other on comparative constitutional law. Henry Parker Willis, who resigns his professorship at Washington and Lee University, will have the chair of finance. Howard L. McBain, Ph.D., has been appointed instructor in political science, and M. J. B. Osborne, lecturer on the consular service. The acting dean of the college will be Dr. C. W. A. Veditz.

The thirteenth Lake Mohonk conference on international arbitration urged as the most immediate and important action to be taken by the second Hague conference the following measures:

1. A provision for stated meetings of the Hague conference.
2. Such changes in the Hague court as may be necessary to establish a definite judicial tribunal always open for the adjudication of international questions.
3. A general arbitration treaty for the settlement of international disputes.
4. The establishment of the principle of the inviolability of innocent private property at sea in time of war.
5. A declaration to the effect that there should be no armed intervention for the collection of private claims when the debtor nation is willing to submit such claims to arbitration.

In accordance with its resolution of last year the conference recommended the consideration by the Hague conference of a plan for the neutralization of ocean trade routes.

The Yale Law School has purchased for $15,000 a complete collection of the session laws of the legislatures of all the American States and territories. The collection consists of between 4000 and 4500 volumes, and is said to be the only complete set in existence.

Mr. Robert Bruce Scott has been appointed assistant professor of political science in the University of Wisconsin. Mr. Scott is a graduate of the University of Pennsylvania, and was for ten years engaged in the practice of law in Illinois. Mr. W. J. Shepard and Miss Margaret Schaffner have been appointed instructors in political science in the same institution. Mr. Shepard has recently spent two years abroad on a Harvard graduate fellowship, and will receive his doctor's degree this year. The subject of his thesis is Ministerial Responsi-

bility. Miss Schaffner has for two years been assisting Dr. McCarthy in his work in the Wisconsin legislative reference department.

Mr. Frank Greene Bates has been appointed assistant professor of history and political science in the University of Kansas. Mr. Bates is a graduate of Cornell University, and received his Ph.D. degree at Columbia in 1901.

Dr. A. R. Hatton of the University of Chicago, has been chosen as the first incumbent of the Marcus A. Hanna chair of political science in the Western Reserve University. This chair has an endowment of $100,000, raised by the friends of the late Senator Hanna, throughout the country, $25,000 of the amount being contributed by Mr. Andrew Carnegie. A new chair of sociology has also been established at Western Reserve, with Dr. J. E. Cutler as the first incumbent.

Mr. Francis W. Coker has been appointed instructor in political science at the University of Missouri.

Prof. D. Y. Thomas, who received the degree of doctor of philosophy at Columbia in 1904, has been appointed professor of history and political science in the University of Arkansas.

It is announced that President Hadley, the second incumbent of the Roosevelt professorship of American history and institutions in the University of Berlin, has chosen for the subject of his lectures, the Industrial Policy of the United States.

Prof. J. W. Burgess delivered his closing lecture as Theodore Roosevelt professor in the University of Berlin, on March 2, in the presence of a distinguished company, including the emperor and the empress. During the year he lectured to a class of about two hundred students on the constitutional development of the United States, and also conducted a seminar for a smaller number of advanced students. During the winter he delivered a course of six lectures to a body composed largely of Prussian administrative officials. At the request of the Prussian ministry of education he delivered a short course of lectures at the University of Bonn in May and June, and later a similar course at Leipzig.

The draft of a plan for indexing the federal statutes, prepared for the approval of the judiciary committee under an act of congress, approved June 30, 1906, and submitted for the criticism of all who have occa-

sion to use the indexes to the federal statutes has appeared from the government printing office. The work was done under the direction of Dr. Geo. Winfield Scott, law librarian of congress, and forms a volume of about 900 pages.

During the absence of Prof. F. J. Goodnow next year, several of his law courses at Columbia University will be conducted by Dr. Thomas Reed Powell.

Dr. Benj. F. Shambaugh, head of the department of political science in the State University of Iowa, has been appointed superintendent and editor of the State Historical Society of Iowa.

Mr. M. L. Ferson has been appointed assistant instructor in jurisprudence in the department of political science at the State University of Iowa.

Dr. H. R. Spencer, assistant professor of political science at Princeton, has accepted a professorship of American history and political science in the University of Ohio. Mr. Spencer received the Ph.D. degree from Columbia in 1904.

Prof. L. S. Rowe of the University of Pennsylvania has recently been honored with the degree of doctor of laws by the University of Chile.

Señor Ruy Barbossa, a distinguished Brazilian statesman, has been appointed by the Yale corporation, to deliver the Dodge lectures at Yale University next year. Señor Barbossa rendered his country conspicuous service in the work of drafting the present constitution of Brazil.

Prof. William R. Shepherd of the Columbia University School of Political Science, has undertaken a unique educational mission to South America, the purpose being to create a wider interest among Latin American people in the educational institutions of North America, and to promote closer educational relations between the people of the two continents. Dr. Shepherd is also charged with the establishment of branches of the Association for International Conciliation throughout South America.

Dr. W. W. Folwell, first president of the University of Minnesota and for many years professor of political science in the same institution, has retired upon a pension provided by the Carnegie foundation.

Prof. John H. Gray of Northwestern University has been appointed to succeed Dr. Folwell. Dr. Frank L. McVey, professor of economics in the same institution, has resigned to accept the presidency of the newly created State tax commission, and Dr. E. V. Robinson of the St. Paul High School has been appointed as his successor.

A committee of the American Political Science Association, of which Prof. W. A. Schaper is chairman, is making a careful investigation of the subject of instruction in government in the preparatory schools, and will present the results in an elaborate report at the next meeting of the association at Madison in December.

Mr. O. C. Lockart has been appointed instructor in political science in Cornell University.

Mr. Ernest S. Bradford, who recently received his doctor's degree in political science at the University of Pennsylvania, has been appointed assistant librarian of the law library of congress.

A department of political science has been established in the College of the City of New York, with Dr. Walter A. Clark as acting head, and Dr. W. B. Guthrie as instructor. Both appointees received their graduate training at Columbia.

A chair of political science has been established in the University of Cincinnati, and a professor in charge will be appointed at an early date.

Dr. J. L. Beer has in preparation a work to be entitled *British Colonial Policy, 1754–1765*. The volume will appear next fall from the press of the Macmillan Company.

Second editions have appeared of Salmond's *Jurisprudence or the Theory of the Law* (Stevens and Haynes), and Smith and Sibley's *International Law as Interpreted During the Russo-Japanese War* (The Boston Book Company).

A new edition of Asher C. Hinds' *Rules and Precedents of the House of Representatives* will be published by the United States government next winter.

A biography of Samuel Freeman Miller, associate justice of the supreme court of the United States from 1862 to 1890, will soon be issued by the State Historical Society of Iowa in the *Iowa Biograph-*

ical Series. The book has been prepared by Dean Charles Noble Gregory of the Law College of the State University of Iowa.

New publications in the Johns Hopkins series in historical and political science, are Prof. Bernard C. Steiner's *Maryland During the English Civil Wars*, in two parts, and Prof. Beverly W. Bond's *The Monroe Mission to France.*

Mr. W. F. Dodd has in preparation for publication a collection of the constitutions of the more important countries of the world. All texts will be given in English translation where English is not the original language. Each constitution will be preceded by a brief historical note and a select bibliography.

The third and concluding volume of Professor Osgood's *The American Colonies in the Seventeenth Century*, has appeared from the Macmillan press. This volume deals mainly with the control exercised by the British government over the colonies.

Masuji Miyakawa, D.C.L., LL.D., who claims to be the first Japanese attorney ever admitted to the bar in the United States, and at present a lecturer in the law school of the University of Indiana, has written a book, unique in some respects, entitled *The Powers of the American People* (Wilkins-Sheny Company, Washington). It shows an intelligent comprehension of the fundamental principles of the American political system and of American public law, and though poorly written possesses some interest as a nonpartisan interpretation of the American Constitution, by an oriental scholar, educated in the United States.

The Macmillan Company has recently published a book by President Nicholas Murray Butler, entitled *True and False Democracy*, being mainly a collection of President Butler's addresses on public questions. Some of the subjects discussed are: democracy and education, the socialist propaganda, the problem of wealth, the individual and public opinion, the party, education and politics, citizenship, etc.

Dr. William H. Allen, general secretary of the New York Association for Improving the Condition of the Poor, has brought out, through Dodd, Mead and Company, a book entitled *Efficient Democracy.* It is a wholesome study largely of social methods and contains a strong plea for a more general use of statistics as a means of getting at the

causes of social evils. He presents a strong argument in favor of a bureau of research as one of the most potent agencies of social progress and criticises the haphazard methods of the bureaus of statistics as they generally exist in America.

The National Municipal League has published a pamphlet entitled *The Awakening of Harrisburg*, a "remarkable story of the awakening and regeneration of an American city." It shows what can be done toward the improvement of municipal conditions in a city when once the people have been aroused to the necessity of action. The Civic League of St. Louis has published a somewhat similar pamphlet, entitled *A Year of Civic Effort*, showing what has been undertaken and what accomplished in St. Louis during the past year.

An unusual demand for Lord Avebury's (Sir John Lubbock) *Municipal and National Trading* (Macmillan) has led to a reprinting in a cheaper form, of this popular work, with some corrections by the author. Lord Avebury opposes the policy of municipal trading on five grounds, each of which he elaborates with detail and supports with able argument. The book was used as a sort of campaign document in the recent county elections in London, and had an important influence on the results.

Two new books dealing with South African affairs are, *The Aftermath of War*, by G. B. Beak, being an account of the repatriation of the Boers and natives in the Orange River Colony, 1902–1904, and *The Natal Rebellion of 1906*, by Captain Walter Bosman. Both books are published by the house of Longmans and the authors of both have held positions in the public service of the empire in South Africa.

A new, revised and enlarged edition of Prof. John R. Commons *Proportional Representation*, containing new chapters on the initiative, the referendum and primary elections, has been issued by the Macmillan Company. Prof. Commons has recently published through the same house, a new book, entitled, *Races and Immigrants in America*, a study mainly of social and economic problems due to the presence of the large foreign element in the United States.

Secretary Root's address on the rights of the States, delivered in New York last December, and which attracted widespread attention at the time, has been reissued by Brentano's in an "authorized and corrected" edition, under the title, *How to Preserve the Local Self-*

government of the States: A Brief Study of National Tendencies. Mr. Root maintains that the preservation of the States lies not in the destruction of their rights but in the vigorous exercise by them for the general good of the authority left to them by the Federal Constitution. Secretary Root's Yale addresses have also been recently published by Scribners under the title *The Citizen's Part in Government.* The volume contains four lectures of unusual quality.

The Development of Western Civilization is the title of a new book by Dr. Jacob Dorsey Forrest of Butler College, Indiana (University of Chicago press). It grew out of a dissertation offered for the Ph.D. degree in the University of Chicago, and represents an attempt to trace the evolution of modern society as a condition precedent to an understanding of existing social life. He reviews the contributions made by the ancient nations to modern civilization, surveys the conditions existing during and following the Middle Ages, traces the development of agriculture and commerce, and discusses some of the important social movements of the present day. It is on the whole a meritorious piece of work and is of about equal value to the historian, the economist and the political scientist.

Sir Frank Swettenham, late governor of the Straits Settlements and High Commissioner for the Federated Malay States in a volume entitled *British Malaya* (John Lane Company) reviews the steps leading up to the federation of 1895; discusses the institutions, customs, language and literature of the Malay peoples and explains the British administrative system in the States forming the federation.

Prof. J. A. Stephens of the Topeka, Kansas, High School, has published a pamphlet of 122 pages containing a careful study of the juvenile court system of Kansas (Mail and Breeze Publishing Company, Topeka).

Review of Internationalism is the title of a new journal issued every two months in an English, a French, a German and a Dutch edition, and edited by the office of the Foundation for the Promotion of Internationalism at the Hague. The American agents are G. E. Stechert and Company, New York. The stated object of this *Review* is "to give an idea of all that has been done and thought in the field of internationalism, but more especially of what still has to be done in the future." The first issue is dated April, 1907. The yearly subscription price is $2.40

A new monthly magazine called *Government* to be devoted to the study of economic and applied politics has made its appearance from the press of the Government Publishing Company, Boston.

A new magazine, entitled *The Common Good*, published by the Civic Press of 102 Fulton Street, New York, has lately been launched. It will be devoted to the study of public questions and political reform.

Dr. Berner, professor of constitutional law in the University of Berlin, has given to the University 4000 marks to be awarded for the best study of the criminal systems of foreign lands, particularly of England, France and the United States. Candidates must have studied law and political science in a German university and must be able to read French and German. The desirability of introducing important reforms into German criminal procedure is now being widely discussed throughout Germany. Reference was made in the May number of the *Review* to the controversy between Dr. Adickes of Frankfort and Prof. Friedrich Stein of Halle over this subject. Professor Stein's new book, *Zur Justizreform* (Mohr, Tübingen), contains a thoroughgoing discussion of the subject, and has attracted wide attention.

A valuable contribution to Oriental constitutional law is James Greenfield's *Die Verfassung des persischen Staates* (Vahlen, Berlin).

Karl Guttenback, professor of criminal law in the University of Königsberg, has contributed a chapter to the diplomatic history of the Orient, under the title *Byzanz und Persien in ihren diplomatische Beziehungen in Zeitalter Justinians* (Guttentag, Berlin).

A contribution to European legal history has been made by Geo. von Bulow, under the title *Die Ursachen der Rezeption des römanischen Rechts in Deutschland* (Oldenberg, Munich and Berlin.)

Volumes IV–VII of George Young's monumental *Corps de droit Ottoman* (Henry Frowde), the first three volumes of which was published a year ago, has recently appeared from the press. It is not only an exhaustive treatise on Moslem jurisprudence but deals with Turkish finances, postal services, railways, telegraphs, weights and measures, and a variety of other subjects. Mr. Young is secretary of the British embassy at Constantinople.

Eduard Rosenthal, professor of public law in the University of Jena, has completed the second volume of his *Geschichte des Gerichts-*

wesen und der Verwaltungs-organization Baierns (Würzburg). It covers the period from the end of the sixteenth to the middle of the eighteenth century, and is to be completed by a third volume, which will appear in due course.

The second volume of Chr. Meurer's *Die Haager Friedenkonferenz* (München) appeared just as the second conference was making ready to assemble. The volume deals with the laws of war as they were formulated by the first conference. The first volume, which appeared a year ago, was devoted to the law of peace.

The Whirlpool of Europe—Austria-Hungary and the Hapsburgs (the Macmillan Company) by A. R. and E. M. Colquhoun, is a timely and interesting contribution to the history, politics and institutions of the dual monarchies. The book is divided into two parts, the first of which is mainly historical. The second part deals with the government, economic situation, socialism, finances, the army, the race question, and the international position of Austria-Hungary in Europe.

A study of the upper house of the Austrian parliament at the present time, called out presumably by the recent agitation for universal suffrage and parliamentary reform, has been published by Gustav Kölmer, under the title *Das Herrenhaus der Oesterreichischen Reichsrats nach dem Beistande Ende des Jahres 1906* (Fromme, Wien und Leipzig).

The recent inaugural address of Professor Baumhagger at the University of Bonn, entitled *Die rechtliche Natur der Naturalisation nach deutschen Reichsstaatsrecht*, has been published by Carl Georgi, Bonn. The question of citizenship in Germany as in the United States has recently assumed an importance heretofore unknown, if we may judge from the attention now being given to the subject by publicists and political writers.

Another contribution has been made to the literature dealing with the international law of the Russo-Japanese War. The title of the new work is *La guerre russo-japonaise au point du vue du droit international*, by Fr. Rey (Paris, 1907).

H. E. von Hoffman, private docent in administrative and ecclesiastical law in the University of Göttingen, has written a monograph dealing with the constitutional and administrative law including the judicial system and general principles of political organization of the

German colonies. The title of his work is *Deutsches Kolonialrecht* (Leipzig, 1907).

The first volume of an elaborate study of the administrative law of Baden, by Richard Thoma, docent in public law in the University of Freiburg, has appeared from the house of Mohr (Tübingen), under the title *Der polizei befehl im badischen Recht.* It deals with the history, nature and limits of the police power in Baden, and will be followed by a second volume on the content, the constitutional law governing the police command, and the control of the courts over the police administration.

A second edition of Dr. Edgar Loening's *Grundzüge der Verfassung des Deutschen Reichs* has appeared from the press of Teubner (Leipzig).

An enlarged and improved edition (the third) of Dr. Adolf Arndt's *Verfassung des Deutschen Reichs* has been issued by Guttentag (Berlin).

Two German contributions to the literature of commercial politics are *Die Tarifverträge in französischen Privatrecht* and *Die Tarifverträge und die moderne Rechtswissenschaft* both by Dr. J. Rundstein (Mohr, Tübingen).

Anton Menger, the well known author of *Neue Staatslehre,* has recently brought out an essay entitled *Volkspolitik* (Mohr, Tübingen).

Dr. Alfred Zimmermann, formerly a member of the colonial section of the German imperial foreign office, later an attaché of the German consulate at London and still later minister to Belgium, has lately published a work, entitled *Kolonialpolitik* (Hirschfeld, Leipzig). It embodies the results of the author's twenty years' experience in dealing with colonial problems and is a thoroughgoing, original and useful handbook on colonial government.

The twenty-second volume of de Clercq's *Recueil des traités de la France* published under the auspices of the French foreign office, has appeared from the press of A. Pedone, Paris. It is a volume of nearly 800 pages, and covers the period from 1901 to 1904 inclusive.

A study of international labor legislation is contained in a book entitled *Droit international ouvrier* by B. Raynaud, professor of law

in the University of Dijon. The author shows how in recent years various labor questions having an international significance have arisen and how they are being dealt with through the medium of treaties and conventions. He discusses some of the more important treaties concluded among the European powers, and publishes the text of several in the appendix of his book.

Ottomar Schuchardt, who, with Constantin Frantz, several years ago published a work in three volumes dealing with various questions of larger practical politics in the German Empire (*Die deutsche Politik der Zukunft*), has now followed up his earlier work with a complementary volume, entitled *Umrisse einer Staatsverfassung für das mittlere Europa* (Zahn und Jaensch, Dresden).

Readers of the REVIEW will be interested in part two, section viii (a volume of 526 pages), of Prof. Paul Hinneberg's monumental work, *Die Kultur der Gegenwart* (Teubner, Berlin and Leipzig), several volumes of which have already appeared. The title of the present volume is *Systematische Rechtswissenschaft*, being a series of monographs by a number of European publicists of distinction. Professor Stammler writes an introductory chapter on general theories of law and jurisprudence, Rudolph Sohm writes on the civil law, Karl Gareis on commercial law, Ludwig von Bar on private international law, Franz von Liszt on criminal law and procedure, L. von Seuffert on civil procedure, F. von Martitz on public international law, Gerhard Anschütz on administrative law, and Professor Laband on constitutional law.

A valuable contribution to the literature of citizenship, viewed from the standpoint of international law is Prof. Dr. J. Sieber's *Das Staatsbürgerecht in internationalen Verkehr, seine Erwerbung und sein Verlust*, two volumes (Stämpfli et Cie, Bern, 1907).

A contribution to the diplomatic history of Europe has been made by an Italian, Michele Asmundo, in a work entitled *La Diplomazia Europea* (Pastore, Catania). The author reviews the diplomacy of antiquity, the diplomatic history of the war of the Austrian succession, of the revolution and of the empire, and discusses the methods and agencies of diplomacy.

Bernardino Alimena, professor of law and of criminal procedure in the University of Modena, has written a treatise on Italian criminal procedure, entitled *Studi di procedura penale* (Bocca, Turin). The

present Italian code of criminal procedure was adopted in 1859 and has undergone few modifications since. An elaborate project for revision was recently presented to the parliament by a commission appointed by the government in 1898, and the report has been submitted to the criticism of magistrates, law professors and publicists. Signor Alimena declares that the present code is out of date and should be modified by the introduction of various reforms (a long list of which he cites), such as have been embodied in the codes of America and many European countries.

La responsabilité de la puissance publique (Paul Dupont), by George Teissier, is the title of a new contribution to the literature of French administrative law. It is, in the main, a critical study of the legislation and jurisprudence governing the subject of expropriation and contains an exposition of the special rules relating to damages to private property on account of the erection of public works.

Félix Alcan has completed the publication in sixteen volumes of the instructions given to the ambassadors and ministers of France to the various governments of Europe from the treaty of Westphalia to the French revolution. The publication was done under the auspices of the diplomatic archives commission of the French foreign office and each volume is accompanied by an introduction and notes.

Christian Scheffer, a professor in the School of Political Science of the University of Paris, has completed the first volume of a work, entitled *La France moderne et le problème colonial* (Félix Alcan, Paris).

A volume entitled *Études politiques* by the late M. Boutmy, whose death was chronicled in a recent number of the POLITICAL SCIENCE REVIEW, has appeared from the press of Armand Colin. It consists mainly of detached and fragmentary contributions of M. Boutmy, some of which had already appeared in the *Annals des Sciences Politiques*. The two most important of the studies are *La Souveraineté du Peuple* and *La Declaration des droits de l'homme*, the latter being written in answer to certain views expressed by Jellinek in his essay on the "declaration of the rights of man" published in 1902.

Prof. A. Debidour of the University of Paris is continuing his earlier work *Histoire des rapports de l'Église et de l'État en France de 1789 à 1870*, with another treatise entitled *L'Église Catholique*

et l'État sons la Troisième Republique, 1870–1906. The new work is to be completed in two volumes, the first of which has already appeared from the press of Alcan, and the second is announced to appear at an early date. The first volume covers the period from 1870 to the year 1889 and the second will bring the narrative down to the separation law of 1906. In addition to expository matter, the work contains important extracts from documentary sources.

The International Colonial Institute of Brussels has completed the publication in three volumes of a collection of the organic laws of the colonies belonging to the various European States (*Les lois organiques des colonies*). The first volume contains the texts of the organic laws of the British colonies and dependencies with an introduction by M. H. Speyer, a Belgian advocate; the second volume and part of the third, contains the organic laws of the French colonies, with an introduction by Arthur Girault, professor of law in the University of Poitiers; and the remaining part of volume three is given up to the laws of the Dutch, German and Italian colonies. This collection forms the eighth series of the publications of the *Bibilothèque coloniale internationale.* The first series was devoted to the general subject of the purpose and work of colonies; the second, to colonial functionaries; the third, to colonial finance; the fourth, to protectorates; the fifth, to colonial railways; the sixth, to mines in the colonies; and the seventh to irrigation systems in the colonies.

A very interesting study of juvenile courts in the United States, France, Great Britain and Germany, has been brought out by the Paris review, *l'Enfant*, under the title *Les tribunal speciaux pour enfants aux États Unis en France, en Angleterre, et en Allemagne.* The work was done under the direction of Senator Bérenger, the authors being M. M. Julhiet, Rollet, Kleine and Gastambide. The superiority of the American tribunals and practice is recognized. A beginning was made in England in 1905, since which time juvenile courts have been established in six English and Welsh cities, three cities of Scotland and two cities of Ireland. The new German civil code provides for somewhat similar tribunals, and France, by a law of April 12, 1906, has introduced the system of juvenile courts.

Ernest Désirè Glasson, a professor in the law faculty of the University of Paris, died in the early part of the year at the age of sixty-seven. He was the author of a large number of works on historical,

political and legal questions, among which may be mentioned: *Histoire du droit et des institutions politiques civiles et judiciaires de l'Angleterre comparés au droit et aux institutions de la France depuis leur origine jusqu'à nos jours* in six volumes; a *Histoire du droit et des institutions de la France*, in eight volumes; and *Le Parlement de Paris, son rôle depuis Charles VII jusqu'à la Revolution*, in two volumes.

An important French contribution to the literature of English municipal government has recently been made by M. Boverot, under the title *Le socialisme municipal in Angleterre et ses resultats financiers* (Rousseau).

New editions of two standard works, Liszt's *Völkerrecht systematisch dargestellt* (Haring, Berlin) and Bonfil's *Lehrbuch des Völkerrechts für Studium und Praxis*, edited by Paul Fauchille and translated into German by Grah (Heymann, Berlin) have recently appeared from the press. The new edition of Bonfils has been brought up to date and illustrated with numerous lessons from the Russo-Japanese war.

The first instalment of an important service to the science of international law has been rendered by two French professors, Lapradelle of the University of Grenoble and Politis of the University of Poitiers in the publication of a work entitled *Recueil des arbitrages internationaux* (Pedrone, Paris). The first volume covers the period from 1798 to 1855, beginning with the arbitrations under the Jay treaty and concluding with an account of the mixed commission of 1855 between the United States and England. Other volumes are to appear and when complete the work will, so far as present indications point, take rank with Moore's monumental digest, although the plan is somewhat different.

Two new books dealing with the German imperial parliament are: *Der deutsche Reichstag und seine Beschäftsordnung*, by Dr. Berheim Weiss (Carl Heymann, Berlin), and *Die Zuständigkeit des deutschen Bundesrats* by Dr. H. Sievert (Berlin). The former deals with the question of how far the reichstag is bound by its order of business; the latter discusses the question whether the bundesrat is competent to settle controversies regarding succession to the throne, the conclusion being in favor of the negative view.

Two recent German contributions to Swiss constitutional law are Dr. J. Schollenberger's *Bundesstaatsrecht der Schweiz* (Haring, Berlin), and Dr. P. Wolf's *Die schweizerische Bundesgesetzgebung* (Basel, 1906).

A German criticism of the new Russian constitution has been written by Prof. Max Weber under the title *Russlands Uebergang zum Scheinkonstitutionalismus* (Tübingen, 1906).

Dr. William Liszt, professor of Roman law in the University of Jena, recently died in the eighty-seventh year of his age.

Dr. Emil Steinbach, first president of the Austrian supreme court and a member of the upper house of the Austrian parliament, recently died at an advanced age. He was the author of a large number of legal and political works, among which were: *Grundsätze des heutigen Rechtes*, and *Der Staat und die moderne private Monopole.*

Marcel Fournier, the founder of the *Revue Politique et Parlementaire* and its editor from 1894 to 1901, recently died in Paris at the age of fifty years. He held professorships of law in several French universities, and exerted great influence on the teaching of law in France. He was the author of *Les statuts et privilèges des universités françaises*, in four volumes, and of *L'Histoire de l'enseignment du droit en France au Moyen-Age*, the first of which was published under the auspices of the ministry of education.

Dr. Ernst A. von Seuffert, professor of Roman law in the University of Munich, recently died in his seventy-seventh year.

Dr. Paul Langheineken, professor of the German law of civil procedure in the University of Munich, has been called to the University of Halle, as the successor of Prof. Freidrich Stein.

The third and last volume of Dareste's *Nouvelles études d'histoire du droit*, has lately appeared from the press of Larose et Tenin (Paris). The present volume contains a series of essays on a variety of topics in legal history, among which may be mentioned, the Hamurabian code, the criminal law of Greece, notes on Albanian customs, the maritime code of the Rhodians, the law of the Visigoths and Burgundians, the origin of English law and various subjects of French legal history.

Municipal Notes

JOHN A. FAIRLIE

Local Transit and Municipal Ownership. Probably the most pressing problem before American cities at present is that of securing satisfactory methods of local transportation. In one form and another the problem is being actively discussed in many of the principal cities. And in most places the problem includes both the technical question of securing adequate facilities, and the question of policy as to the relative degree of public and private control. Notably in Chicago, Cleveland and Detroit, extensive plans for street railways have been discussed and important decisions have been reached. And among the largest cities in the eastern States increased facilities are being provided by means of subways and elevated railways in New York, Philadelphia and Boston.

Chicago presents the most important and most interesting situation. As a culmination of the ten years contest with the street railway companies and the more recent agitation in favor of municipal ownership, new ordinances were passed by the council in January, and adopted at a popular referendum on April 2. These provide practically for a joint partnership between the city and the companies. The latter will for the present continue to operate the lines, and furnish capital for a thorough rehabilitation of the antiquated system; but the city has the right to purchase the plant at any time on six months' notice, at a fixed price ($50,000,000) for the present plant, and the cost of the new improvements. Through lines and transfers from any district of the city to the others are to be established. The city will supervise the new construction, has large powers of control over the service, supervision over the accounts of the companies, and will receive 55 per cent of the profits after paying operating expenses, taxes and five per cent on the actual investment. A decision of the supreme court of Illinois, on April 18, that the Müller law certificates must be included within the city debt limit, leaves the city without adequate financial means to purchase the plant.

In Cleveland there has been a long contest between Mayor Johnson and the Cleveland Electric Company, complicated by protracted litigation. New franchises had been granted to another company on a basis of three cent fares; while another corporation, the Municipal

Traction Company, organized to act as a trustee for the city, had leased these lines, and begun operation in November. The Cleveland Electric Company asked for a twenty years' renewal of its franchises, on the basis of seven tickets for a quarter, with a provision for purchase by the city at the end of that period, as an operating concern. Mayor Johnson declined to submit this offer to a popular referendum, unless the company would agree to an alternative proposed for leasing all its lines to the Municipal Traction Company. In January a decision of the United States Supreme Court sustained the claims of the city as to the dates when the former franchises expire, but held that under the Ohio law the city could not take possession of the property. After this decision the Cleveland Electric Company opened negotiations for leasing its property and unexpired rights to the Municipal Traction Company; but these soon came to an end, and the contest has become acute.

In Detroit a franchise extending the expiring rights of the Detroit United Railway Company was defeated at a popular referendum in November. Franchises which begin to expire in 1909 were to be extended until 1924, when all rights were to run out at the same time. A schedule of fares was named with different rates at different periods of the day, estimated to average about 3.6 cents; but this involved an increase on some of the existing lines where eight tickets are now sold for twenty-five cents. Provisions for purchase by the city "as a going concern," and the absence of adequate requirements for publicity of accounts were also criticised.

New York City has now 22 miles of subway in operation, carrying as high as 600,000 passengers a day. The tunnels to Brooklyn will soon be in operation. Surveys have been made for 165 miles of new underground routes, to cost the stupendous sum of $300,000,000; and contracts have been authorized for two lines,—one on Lexington Avenue, and one on Seventh, Eighth and Jerome Avenues. A third route connecting Pelham Bay Park in the borough of the Bronx with Coney Island via Brooklyn is ready for contract. But no satisfactory bids have been received for the construction of new lines.

In Philadelphia there was opened in February a subway railroad under Market street, continued as an elevated railway across the Schuylkill river and further to the west.

The new Washington Street subway in Boston has been substan-

tially completed, and it is expected that it will be in use by the close of the year. Definite arrangements have finally been made for the construction of a subway from Park street to Harvard square in Cambridge, by a tunnel under Beacon Hill, and the new Cambridge bridge on the Charles river. The latter subway will be built by the Boston Elevated Railway Company, whereas the previous subways in Boston have been constructed as municipal works. A project has also been presented for another subway through the Back Bay district under the proposed Charles river embankment.

The municipal ownership commission of the National Civic Federation has about completed the report of its elaborate investigation. Minutely detailed studies have been made of the leading municipal and private plants in the principal cities of Great Britain and the United States. And these, with the digests and summarized report will present a body of reliable data on which to base further discussion of this question.

Major Leonard Darwin, late of the British Royal Engineers, delivered in April a course of four public lectures on Municipal Ownership in Great Britain, under the auspices of Harvard University.

Laws for public control of corporations operating municipal and other public utilities have been passed by the New York and Wisconsin legislatures. The New York act provides for the abolition of several existing State and local commissions, and the establishment of two new boards, appointed by the governor, one to deal with all public utility corporations (including railroads) in New York City, and the other to deal with similar corporations in the remainder of the State. The Wisconsin measure will extend the powers of the railroad commission over all companies operating plants to supply power, light, heat or water to or for the public.

New Charters and Legislation. A number of important measures dealing with the organization of municipal government are either before State legislatures or have been enacted into law. A new and comprehensive special charter for the city of Chicago has been passed by the legislature of Illinois. Changes in the local government of the metropolitan area including Boston and vicinity are being considered. The Kansas and Iowa legislatures have passed statutes authorizing the system of commission government recently

developed in some of the Texas cities, and sometimes known as the Galveston plan.

The proposed new charter for Chicago is the most important of these measures. It involves a return to the method of special legislation, after thirty years under general municipal laws. The original Illinois municipal act of 1872 provided a flexible system of machinery adjustable to large and small cities. But in recent years many additional detailed laws have been enacted, nominally of general application, but limited by referendum clauses, and intended distinctly for Chicago. A few years ago an amendment to the State constitution was adopted, definitely authorizing special legislation for Chicago, subject to a local referendum. A few minor changes were made by acts passed in 1905, but the present measure covers the whole subject of municipal organization.

This measure has been framed by a special convention, established by ordinance of the city council. The members were appointed from various sources—by the mayor, the council, the governor of the State, and the presiding officers of the two houses of the State legislature. This convention has been at work for fully a year; and the bill has thus been the result of a more careful consideration and more thorough discussion than most measures of the kind.

One of the main purposes of this movement has been to consolidate the heterogeneous group of municipal authorities that have developed in Chicago. Another purpose has been to enlarge the powers of the local authorities. But owing to conflicting forces in both respects the desired results have been only partially provided.

So far as consolidation is concerned, the board of education will be made more definitely a branch of the city government; and the three autonomous park boards will be united into one board, which is definitely correlated with the city government. But the sanitary district trustees and county government will remain distinct and independent local authorities—the county continuing the unorganized body of officials as heretofore.

In dealing with the powers of the city authorities the attempt is made to secure broad grants of authority in general terms. But at the same time the influence of existing practices is evident in a greatly increased volume of detailed regulation, which, in the form of defining grants of power more exactly, have the practical effect of limiting

the scope and methods of future action. The result is that the new charter, while still much briefer than the bulky legislation for the city of New York, is a much larger document than the previous laws affecting the city of Chicago. And it is almost inevitable that the adoption of this charter will cause a steady increase in the amount of detailed special legislation that will be demanded in the future.

So far as the main features of municipal organization are concerned, the new charter follows the leading principles of the general Illinois law. There will continue an elected council and an elected mayor and city treasurer. But these are to be chosen for four year terms (the term of the mayor had been already extended by an act of 1905); while the city clerk and city attorney are removed from the list of elective officials. In the legislature the number of members in the council was reduced to fifty, and the city redistricted into fifty wards. The act does not go into effect unless approved at a popular referendum in the fall.

In Buffalo a charter commission appointed by the mayor last year, had also prepared a complete revision of the charter of that city. But owing to local opposition it became evident that this could not be enacted in its entirety at this session of the legislature. Accordingly a bill was prepared and introduced in the legislature to amend the existing charter, so as to introduce what seemed to be the most important and most urgent of the changes proposed. This bill provides for a reorganization of the council, and would have greatly increased the powers of the mayor. But even this measure is not likely to pass at this session of the legislature.

Litigation still delays the actual consolidation of Pittsburg and Allegheny, as provided by an act of the legislature passed last year. The supreme court of Pennsylvania has sustained the constitutionality of the statute. But the question has now been carried into the United States courts.

For some years past the Massachusetts State authorities have had laid before them various proposals for the better coördination of the different public services in the Boston Metropolitan District, At present the more important utilities, such as water supply, sewage disposal, parks and transit are placed directly or indirectly under the supervision of several independent metropolitan commissions, the members of which are appointed for long terms by the governor of the

commonwealth. These commissions exercise varying degrees of jurisdiction within the dozen or more municipalities surrounding the city of Boston, all of which, however, lie within a radius of ten or twelve miles. A measure is now before the legislature providing for the appointment of a special commission whose duty it will be to investigate and report upon some plan either for the amalgamation of the various municipalities into a Greater Boston, or for some organization such as will render more facile the coördination of the various municipal interests. It is proposed that this commission shall consist of five or seven members, appointed partly by the governor and partly by the mayor of Boston. Its procedure will, it is expected, be something akin to that followed by the royal commission on the amalgamation of London some years ago.

The proposed new charter for the city of Cambridge, Mass., which was presented to the legislature at its last session and laid over, has been revived in a slightly altered form. A leading feature of the charter is the proposal that all paid municipal employees from highest to lowest shall be appointed under civil service regulations.

The Connecticut State commission on uniform charters for cities, has adopted a resolution that it is impracticable to draft laws that will make charter provisions relating to cities uniform and practicable. The commission has, however, collected and printed replies to a series of questions relative to the charter provisions of the various cities in the State.

Two special commissions on municipal affairs provided by the New Jersey legislature in 1906, have reported. One recommended a uniform fiscal year for all cities, a scale of debt limits and a state auditor of municipal accounts. The other favored the continuance of the present system of taxing the gross earnings of public utility corporations, in preference to a system of dividing excess profits.

At a recent meeting of the Economic Club of Boston, President Charles W. Eliot of Harvard University addressed the members on the defects of the present framework of city government in the United States. He suggested that the cities of New England might find it advantageous to revert to a modified system of government by selectmen, vesting the administration of affairs in the hands of a small body of men elected by the citizens at large—a system not far removed

from the commission plan as established in Texas and provided for in Kansas.

Both of the new Kansas commission laws are optional, one for cities of the first class—those having more than 15,000 population—the other for cities of the second class. For the larger cities which adopt the act, there will be a commission of five members. One will be mayor, and will also act as commissioner of the police and fire departments; and the others will have charge respectively of finance and revenue, waterworks and street lighting, streets and public improvements, and parks and public property. For cities of the second class the commission will consist of but three members.

Several of the larger cities of the State, notably Topeka and Wichita, are planning to vote on the adoption of the commission system at special elections to be held in the fall of 1907, or the spring of 1908.

The Iowa law is optional for cities of over 25,000 population. It provides for a mayor and council of four members, in whom are vested the control of the municipal government. These officers are to be elected on a nonpartisan ballot. Other provisions will establish the merit system in appointments, and the initiative and referendum. The plan has been adopted by Des Moines.

ELECTIONS AND POLITICS. At the November elections the most important cities choosing municipal officials were Detroit and Minneapolis. In Detroit, William B. Thompson, democrat, was elected mayor—on the street railway issue. The republicans continue to control the council by a large majority, but the decline of partisanship was illustrated by the unanimous election of David E. Heineman as president. In Minneapolis, former mayor Haynes was again elected over David P. Jones, the result indicating a reaction from the reform policy that has been in force in regard to police matters.

Los Angeles elected city officials in December. There were three tickets in the field, republican, democratic, and non-partisan. The non-partisan candidate for mayor Arthur C. Harper, was elected by a plurality of 2000; and there is excellent prospects for an honest and capable administration. The city council was much strengthened by the election of new members. Several amendments to the city charter were adopted, and others defeated.

Philadelphia in February elected as mayor, John E. Reyburn, the

organization republican candidate, over the city party nominee, W. H. Potter. This result was due, in part to dissensions in the city party, and to the charge that the city party was aristocratic. Mayor Reyburn is personally a man of good character but is an avowed partisan and his administration will doubtless mean a reaction, but not a return to old conditions. There will be a considerable minority of city party men in the councils.

San Francisco local affairs have been prominently in the public eye for several months. The exclusion of Japanese from the public schools by the board of education raised constitutional and international questions. The constitutional issue has been avoided; and international difficulties have been settled by an agreement under which Japanese laborers will be excluded from this country. Disclosures of long suspected corruption in local politics have led to the indictment of Mayor Schmitz, Abraham Ruef, his political organizer, and many minor officials. Ruef has confessed. Schmitz has been convicted and prominent business men have become implicated.

Municipal elections in London, both for the metropolitan borough councils in November and the county council in March, have been marked by the defeat of the progressists, and the success of the moderates or reform party. This result has been freely described in this country as a defeat for the municipal ownership policy; and it means no doubt that there will be a reaction from the aggressive policy followed in recent years. In particular, the plans for a centralized municipal system for the supply of electric power will probably be abandoned. But, apart from the financial failure of the Thames steamboat service, the criticisms of the progressists were based, not so much on their management of undertakings connected with the municipal ownership movement in this country as on the extravagance and more pronounced socialistic tendencies in connection with the management of schools and means of recreation, and on some more flagrant cases of mismanagement, as in the Poplar board of poor law guardians. The election was notable for the unusually large vote polled. The *Spectator*, while approving the results, notes with regret the replacement of many experienced members of the county council by new and untried men.

In the provincial British towns, the annual November elections do not seem to have been of especial moment. In Birmingham the

unionists failed in their attempt to defeat one of the ablest members of the council because he had not followed Mr. Chamberlain's tariff policy. This is the more notable, as national politics have been a more important factor in Birmingham municipal elections than in any other British town.

Early in April, municipal elections were held throughout many States of the middle west, from Michigan to Montana. Much the most important contest was in Chicago. Here, F. A. Busse the republican candidate was elected mayor over E. F. Dunne, the main issue being the street railway ordinances, which were approved at the same time. Mr. Busse had the united support of both old and new political leaders of his party, and also the endorsement of President Roosevelt. Sweeping changes have been made in the heads of departments and also in the civil service commission and the school board.

MISCELLANEOUS. New city clubs have been established in Boston and Cincinnati. These are somewhat similar to the city clubs in New York and Chicago, but in Boston the club is organized on a broader basis, including public officials as well as private citizens interested in public questions. A number of addresses have been given by men prominent in municipal affairs of the vicinity, frequent "round table conferences" have been held on various subjects; and the committees have been active and influential in local administrative matters.

State leagues of municipal officials are becoming a prominent educational influence in municipal affairs. Meetings of the Wisconsin, Iowa and Pennsylvania Leagues were held last August and September. A new League was organized in North Dakota in December. The Michigan League held its ninth annual convention at Detroit, June 6–8. The Indiana League met June 18–21. The Texas Mayors' Association met July 5–6.

The League of American Municipalities has moved its headquarters to New York City. The next annual convention will be held at Norfolk, Va., Septembr 19–21, in connection with the Jamestown Exposition. The American Society of Municipal Improvements will meet in Detroit, September 17–19. The National Municipal League will meet in Providence in the week of Nov. 19, in conjunction with the American Civic Association.

The board of aldermen and the common council of the city of Boston have concurred in voting an appropriation to defray the expenses of a special commission for the investigation of the city's finances. The members of the commission are to be named by five prominent unofficial organizations such as the Chamber of Commerce, the Merchants' Association, etc. When duly constituted, the task of this commission will be to investigate the financial condition of the city, the methods of accounting, feasible means of increasing the civic revenues, and the possibility of any retrenchment in expenditures. The Boston financial situation has during the last few years given ground for apprehension and there has been a growing demand for a thorough enquiry. It is thought in some quarters that the present move on the part of the city authorities is designed to forestall any action on the part of the State legislature as proposals for a financial investigation have recently been laid before this body.

The Bingham Police Law, recently enacted, very largely increases the power of the police commissioner of New York City over the organized police force. Since Mayor Low's administration, the police commissioners of New York City have been men of the highest personal integrity; but they have been seriously hindered in their efforts to root out the corrupt practices in the police force by the independent position of the subordinate officials and patrolmen. The new law increases the commissioner's power over the chief officials and the detective service, by making these temporary assignments instead of permanent posts.

A bureau of municipal research has been established in New York to secure publicity and intelligent supervision of the executive departments of the city. Among its stated objects are, to promote efficient and economical municipal government; to secure the adoption of scientific methods of gathering and reporting the details of municipal business with a view to facilitating the work of public officials; to secure publicity in matters pertaining to municipal problems, and, as a means to these ends, to collect, classify, analyze, correlate, interpret and publish facts as to the administration of municipal government. The staff of the bureau at present includes a director and ten accountants and directors. It is now engaged in studying the operation of the health department, and will, at an early date, take up the water supply, gas and electricity, the dock department, and rapid

transit system. Among the incorporators are E. R. A. Seligman, Albert Shaw and Richard Watson Gilder.

The Baldwin prize of $100, given by the National Municipal League in memory of the late James H. Baldwin, has been awarded this year to Thomas A. Thacher, a junior in Yale University, for the best essay on The Relation of the Modern Municipality to the Water Supply. Nine essays were submitted, representing various parts of the country from Rhode Island to California. Special mention was made of the paper by Abraham Pinanski of Harvard on the Metropolitan Water Works System of Boston. The committee of judges consisted of Thos. R. White, Esq. of Philadelphia, Prof. Hector J. Hughes of Boston and Prof. J. W. Garner of the University of Illinois.

Governor Hughes has appointed Dr. Milo R. Maltbie as one of the members of the newly created public utilities commission of New York. Mr. Maltbie received his doctor's degree at Columbia and was for some years the editor of *Municipal Affairs*.

A report of the commission on municipal ownership of the National Civic Federation, a work upon which twenty-five expert accountants, engineers, economists and other specialists, have been engaged for more than a year and a half, has appeared from the press. The report contains the results of an inquiry into the operation of four leading public utilities: Gas, water, electric lighting and street railways. The investigation covered the management of twenty-nine private and public plants in America and twenty-four in Great Britain. The report appears in two parts contained in three volumes, the first being of a general and somewhat popular character, the second containing the reports of the experts on special subjects. Among the contributors to the report are Prof. F. J. Goodnow, Walter L. Fisher, E. W. Bemis, Milo R. Maltbie, Prof. Jno. R. Commons, Prof. L. S. Rowe, Lord Avebury, Robt. McDonald, Robt. P. Porter, and many others. It is not too much to say that this report embodies the results of the most exhaustive inquiry into the subject ever undertaken. The price of the report, bound in cloth, is ten dollars, and it may be had of E. A. Moffett, secretary, 281 Fourth Avenue, New York.

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